CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 666

SURPLUS TRADING COMPANY, PLAINTIFF IN ERROR,

vs.

L. A. Cook

~~J. M. HAYNIE~~, AS SHERIFF AND EX OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

FILED DECEMBER 27, 1927

(33,118)

(33,118)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1927

No. 666

SURPLUS TRADING COMPANY, PLAINTIFF IN ERROR,

vs.

J. M. HAYNIE, AS SHERIFF AND EX OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

INDEX

	Original	Print
Proceedings in supreme court of Arkansas	1	1
Orders extending time	1	1
Praecipe for transcript of record	3	2
Record from chancery court of Pulaski County	7	6
Caption (omitted in printing)	7	
Record entry of filing of complaint	8	6
Restraining order	8	6
Bond on restraining order (omitted in printing)	9	
Record entry of filing of answer and demurrer	10	7
Petition to vacate restraining order	11	8
Order vacating restraining order	13	9
Bond on vacating of restraining order (omitted in printing)	15	
Amended and substituted complaint	18	11
Exhibits A and B—Tax receipts (omitted in printing)	30	
Exhibits C and D—Demands	32	18

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 1, 1928

	Original	Print
Answer	34	20
Decree	40	24
Statement of evidence	43	26
Testimony of Ernest W. Martineau	43	26
Exhibits 1 and 2—Receipts	45	28
Testimony of W. S. Mitchell	47	29
Stipulation in lieu of testimony of Louis B. Stegel	64	40
Testimony of W. T. Dorough	64	41
Exhibit—Assessment list	65	41
Exhibit D—Assessment list	71	45
Exhibit E—Charge item	72	46
Testimony of Henry Moon	79	50
Stipulation as to testimony of Eli Bennett	83	53
Testimony of W. O. Koen	83	53
Testimony of Ben Sager	87	56
Exhibits—Ledger sheets	96	63
Testimony of Max Kalter	121	71
Agreed statement of facts	130	77
Exhibit A—Certificate as to appointment of commission	133	78
Exhibit B—Order granting license	134	79
Exhibit C—Acknowledgment of receipt of property	137	81
Exhibit D—Revocable license	139	82
Exhibit E—Letter from A. C. Dalton to adjutant general of Arkansas, August 10, 1922	141	84
Exhibit F—Letter from Robert Collins to quartermaster general, July 31, 1922	143	85
Order making agreed statement of facts a part of the record	144	85
Order of substitution	145	86
Submission of cause	145	86
Decree	146	87
Opinion	148	87
Motion for rehearing by appellee...(omitted in printing)	159	
Motion for rehearing by appellants (omitted in printing)	162	
Order extending time	165	95
Submission of petition for rehearing	165	96
Order overruling motion for rehearing	166	96
Clerk's certificate.....(omitted in printing)	167	
Assignments of error	168	96
Petition for writ of error	170	98
Supersedeas bond on writ of error..(omitted in printing)	172	
Writ of error	174	99
Certificate of lodgment.....(omitted in printing)	176	
Citation and service.....(" " ")	177	
Return to writ of error.....(" " ")	179	
Statement of points to be relied upon and designation of parts of record to be printed	180	101

[fols. a-1]

IN SUPREME COURT OF ARKANSAS

SURPLUS TRADING COMPANY, a Co-partnership Composed of S. Steinfeld & Company; a Co-partnership Composed of Nathan Steinfeld and Ferdinand Seligman; A. Schaap & Sons, a Co-partnership Composed of Ervin Schaap, Joseph Schaap, and Morris Schaap; Joseph Frenkel, an Individual; Kalter Cerf Mercantile Company, a Corporation Organized and Existing under and by Virtue of the Laws of the State of New York, Plaintiff in Error,

vs.

J. M. HAYNIE, as Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas, Defendant in Error

ORDER EXTENDING TIME—Filed November 9, 1927

On this 9th day of November, 1927, upon application of Surplus Trading Company, Plaintiff in Error, for the enlargement of the time in which to docket this case and file the record thereof with the Clerk of the Supreme Court of the United States, and it appearing that such application has been made before the expiration of the time in which to docket the case and file the record, as aforesaid, and it further appearing that good cause exists for the granting of such application,

It is therefore ordered that the time within which it is the duty of the Plaintiff in Error, Surplus Trading Company, to docket this case and file the record thereof with the Clerk of the Supreme Court of the United States, be enlarged and extended to and including thirty days from this date.

Jesse C. Hart, Chief Justice of the Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 2] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER EXTENDING TIME—Filed December 7, 1927

On this 7th day of December, 1927, upon application of Surplus Trading Company, Plaintiff in Error, for the enlargement of the time in which to docket this case and file the record thereof with the Clerk of the Supreme Court of the United States, and it appearing that such application has been made before the expiration of the time in which to docket the case and file the record, as aforesaid, and it further appearing that good cause exists for the granting of such application,

It is therefore ordered that the time within which it is the duty of the Plaintiff in Error, Surplus Trading Company, to docket this case and file the record thereof with the Clerk of the Supreme Court of the United States, be enlarged and extended to and including twenty days from this date.

Jesse C. Hart, Chief Justice of the Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 3] IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed November 21, 1927

It is mutually agreed and stipulated by H. W. Applegate, Attorney General of the State of Arkansas, Sam T. Poe and Tom Poe, as attorneys for J. M. Haynie, as sheriff and ex-officio collector for Pulaski County, Arkansas, and G. B. Rose, D. H. Cantrell, J. F. Loughborough, A. W. Dobyns, and A. F. House, as attorneys for Surplus Trading Company, a co-partnership composed of S. Steinfeld & Company, a co-partnership composed of Nathan Steinfeld and

Ferdinand Seligman; A. Schaap & Sons, a co-partnership composed of Ervin Schaap, Joseph Schaap and Morris Schaap; Joseph Frenkel, an individual; Kalter-Cerf Mercantile Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, that the transcript of the record in this cause shall be composed of the following specifically designated protions of the record now lodged with the Clerk of the Supreme Court of the State of Arkansas in the cause styled therein Homer M. Adkins, as sheriff, etc., et al. v. Surplus Trading Company, et al., No. 9977, To wit:

[fol. 4] 1. Record Entry showing filing of original Complaint. (Vol. 1, page 18, Transcript.)

2. Restraining Order. (Vol. 1, pages 19, 20, Tr.)

3. Bond required by Restraining Order. (Vol. 1, page 21 Tr.)

4. Record entry showing filing of original Answer and Demurrer of Surplus Trading Company. (Vol. 1, page 60, Tr.)

5. Petition to vacate Restraining Order. (Vol. 1, pages 61-63, inclusive, Tr.)

6. Order vacating Restraining Order on filing Bond. (Vol. 1, pages 73-75, inclusive, Tr.)

7. Bond of Surplus Trading Company. (Vol. 1, pages 76-78, inclusive, Tr.)

8. Amended and Substituted Complaint with Exhibits. (Vol. 1, pages 85-103, inclusive, Tr.)

9. Separate Answer of Surplus Trading Company. (Vol. 1, pages 109-115, inclusive, Tr.)

10. Decree in Pulaski Chancery Court. (Vol. 1, pages 120-123, inclusive, Tr.)

11. Testimony of Ernest W. Martineau, witness for plaintiff, as follows:

Vol. 1, pages 126 to "cross examination" on page 130, including the exhibits within such pages.

12. Testimony of W. S. Mitchell, witness for plaintiff, as follows:

Vol. 1, pages 131 to 132, inclusive, and also the first question and answer on page 133, Tr.;

Vol. 1, beginning with first question on page 149, to page 165, inclusive, and also page 166, down to "cross-examination" on that page, Tr.

13. At this place in the record, the following stipulation should be inserted in lieu of testimony of Louis B. Siegel, witness for plaintiff, (Vol. 1, pages 176-180, Tr.).

[fol. 5] "It is agreed between counsel for both parties hereto that the Surplus Trading Company sold and delivered to Siegel-King Company, merchants of Little Rock, Pulaski County, Arkansas, on June 5th, 1922, ten (10) bales of blankets in question. The blankets were stored in the Terminal Warehouse in the City of Little Rock, County of Pulaski, State of Arkansas, on June 5th, 1922, when the sale and delivery of same was made to Siegel-King Company."

14. Testimony of W. T. Dorough, witness for plaintiff, as follows:

Vol. 1, pages 181 to 196, inclusive; also, first question and answer on page 197. Also, in lieu of the Assessment List appearing as an exhibit and marked as page 182, insert in the record the Assessment List appearing in the Stipulation to Amend the Transcript, filed on June 20, 1927, in the Supreme Court of Arkansas.

15. Testimony of Henry Moore, Jr., witness for plaintiff, as follows:

Vol. 1, pages 276 to 279, inclusive, being all the testimony of this witness.

16. At this place in the record, the following stipulation should be inserted in lieu of testimony of Eli Bennett, witness for plaintiff (Vol. 1, pages 292-299, Tr.):

"It is agreed between counsel for both parties hereto that the testimony in this cause shows that the Surplus Trading Company sold and delivered to Bennett Army Sales Company, merchants, of Little Rock, Pulaski County, Arkansas, on June 22, 1922, ninety-two (92) cases of the blankets in

question. The blankets were stored in the Terminal Warehouse in the City of Little Rock, County of Pulaski, State of Arkansas, on June 22, 1922, when the sale and delivery of same was made to Bennett Army Sales Company."

17. Testimony of W. O. Koen, witness for plaintiff, as follows:

Vol. II, pages 300 to 303, inclusive, being all the testimony of this witness.

18. Testimony of Ben Sagor, witness for defendant, as follows:

Vol. II, Tr., pages 343 to 370, inclusive; first three questions and answers on page 371; last question and answer on page 378; first question and answer on page 379; last question and answer on page 383; first two questions and answers on page 385; page 386 through third answer on page 390.

[fol. 6] 19. Testimony of Ben Sagor, witness for plaintiff, as follows:

Vol. II, Tr., beginning with the second question on page 447, through the third answer on page 449.

20. Testimony of Max Kalter, witness for defendant as follows:

Vol. II, Tr., beginning with the fourth question on page 405, through first paragraph on page 412; beginning at last question on page 419, through the second answer on page 420; beginning with the last question on page 470 through the last answer on page 471, which extends to page 472; beginning with the last question on page 482 through the first question and answer on page 483.

21. Agreed Statement of Facts. (Vol. II, Tr. pages 527-545 inclusive.)

22. Order entered June 4, 1925. (Vol. II, Tr. page 547.)

23. Opinion of Supreme Court of Arkansas.

24. Order of Supreme Court of Arkansas on handing down opinion.

25. Motion for rehearing filed by Surplus Trading Company.

26. Motion for rehearing filed by J. M. Haynie, etc.

27. Order of Supreme Court of Arkansas overruling motions for rehearing.

Witness our hands this 21st day of November, 1927.

H. W. Applegate, Sam T. Poe, Tom Poe, Attorneys for J. M. Haynie, as Sheriff and ex Officio Collector for Pulaski County. G. B. Rose, D. H. Cantrell, J. F. Loughborough, A. W. Dobyns, A. F. House, Attorneys for Surplus Trading Company.

[File endorsement omitted.]

[fol. 7] [Caption omitted]

[fol. 8] In Chancery Court of Pulaski County

Record Entry Showing Filing of Original Complaint

July 19, 1923.—On this day comes the plaintiff by Sam T. & Tom Poe, his solicitors, and by leave of Court files herein his complaint (Record Book 68, page 582).

In Chancery Court of Pulaski County

Restraining Order

July 19, 1923.—Order: Now on this day this cause comes on to be heard upon the petition of the plaintiff for a temporary restraining order, and comes the defendant in person and by his solicitors, W. H. Donham, Prosecuting Attorney for the Sixth Judicial District of Arkansas, and Sam T. & Tom Poe, special counsel, and the Court being well and sufficiently advised as to all matters of fact and law arising on said petition for a temporary restraining order, doth order, adjudge and decree that the defendants, A. D. Cohn, Loyd England, W. S. Mitchell, H. F. Fredeman, George L. Sands, James A. Shipton, W. B. Smith, Moorhead Wright, H. L. Remmel, W. F. Bridewell and John R. Fordyce, individually and as members of and composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board, and the Union Trust Company, England

National Bank, Peoples Savings Bank and Bankers Trust Company, and each of them, be and they are hereby restrained from paying out or over, or otherwise disposing of, any funds now in their hands and possession belonging [fol. 9] to the defendant Surplus Trading Company pending the further order of this Court.

It is further ordered that the defendants A. D. Cohn, Lloyd England, W. S. Mitchell, H. F. Fredeman, George L. Sands, James A. Shipton, W. B. Smith, Moorhead Wright, H. L. Remmel, W. F. Bridewell and John R. Fordyce, and Union Trust Company, England National Bank, Peoples Savings Bank and Bankers Trust Company, and each of them, be and they are hereby ordered to answer within 20 days after the service of summons herein upon them, disclosing the nature, value, character and amount of the chattels, goods, moneys, credits and effects now in their hands and possession belonging to the defendant Surplus Trading Company, or any of the persons, firms or corporations composing the Surplus Trading Company.

This order shall be in force upon plaintiff giving bond in the sum of $1,000 (Record Book 68, page 582).

[fol. 10] Bond on restraining order for $1,000.00, approved and filed July 19, 1923, omitted in printing.

In Chancery Court of Pulaski County

Record Entry Showing Filing of Original Answer and Demurrer of Surplus Trading Company

February 27, 1924.—On this day comes the defendant Surplus Trading Company, by Rose, Hemingway, Cantrell & Loughborough, its solicitors, and by leave of Court files [fol. 11] herein its separate answer and demurrer (Record Book 70, page 132).

In Chancery Court of Pulaski County

No. 30924

Homer M. Adkins, as Sheriff, etc., Plaintiff,

vs.

Surplus Trading Company et al., Defendants

Petition to Vacate Restraining Order—Filed May 7, 1924

Comes the Surplus Trading Company, a partnership, by its solicitors, Rose, Hemingway, Cantrell & Loughborough, and states to the court:

That on the 19th day of July, 1923, an order was entered in this cause directing that the Camp Pike Honorary Commission, the Camp Pike Disposals Board, Union Trust Company, England National Bank, Peoples Savings Bank and Bankers Trust Company be restrained from paying over any funds out of the proceeds of the auction sales in question; that it was provided that the order should not become effective until the filing of a bond in the sum of One Thousand ($1,000) Dollars.

That said bond was filed on said date and in effect guaranteeing this petitioner against all damage which might accrue should it be determined that the restraining order [fol. 12] was improperly issued, and said bond was signed by Homer M. Adkins, plaintiff herein, as principal, and as sureties thereon, Chas. E. Moyer and Tom Poe.

That the funds now in the hands of the Camp Pike Disposals Board, this petitioner is informed, have not been finally divided among three claimants of portions of said fund, being the United States Government Camp Pike Honorary Commission and your petitioner.

That under the terms of the restraining order, the Camp Pike Disposals Board is denied authority to dispose of any and all funds in its hands arising from the auction sales in question, and that the amount in said fund is far in excess of the amount prayed in the complaint herein; likewise, the amount which your petitioner claims as its share of this fund is in excess of the amount prayed in the complaint herein.

Wherefore, petitioner prays that the indemnity bond filed herein be increased to double the amount prayed by plaintiff in its complaint, said latter amount being the sum of $6,708.08, and that the sureties, Charles E. Moyer and Tom Poe be discharged, and that in their place be substituted good and sufficient sureties, who shall be persons other than officers of the State or its political sub-divisions, or attorneys of record for plaintiff herein; that the restraining order, injunction or garnishment hereinabove mentioned be modified, vacated or superseded to the extent of providing that only such amount of the portion of the fund now held by the Camp Pike Honorary Commission and the Camp Pike Disposals Board, claimed by petitioner, as may [fol. 13] be found necessary, be held to answer for whatever sum may be adjudged due plaintiff in this cause.

Rose, Hemingway, Cantrell & Loughborough, Attorneys for Petitioner.

[File endorsement omitted.]

IN CHANCERY COURT OF PULASKI COUNTY

ORDER VACATING RESTRAINING ORDER ON FILING BOND

May 24, 1924.—Order: On this day was called up for consideration the matter of the petition of the Surplus Trading Company, being an application for the modifying of the restraining order made in this cause on the 19th day of July, 1923, and for the increase in the principal amount of the indemnity bond filed herein by plaintiff, for the discharge of certain sureties on said bond and the substitution of property qualified sureties. And the petitioner, Surplus Trading Company, appearing by its solicitors, Rose, Hemingway, Cantrell Loughborough, and the plaintiff appearing by his solicitors, Tom Poe and J. C. Marshall, no written pleadings being filed in response to said petition, arguments were heard by the said parties on behalf of their respective contentions, and it was adjudged and decreed [fol. 14] that the temporary restraining order be vacated in toto; that the Camp Pike Disposals Board, the Camp Pike Honorary Commission, Union Trust Company, Eng-

land National Bank, Peoples Savings Bank and Bankers Trust Company be discharged as parties defendant hereto; that the temporary injunction directed against said parties defendant be superseded; that the indemnity bond now filed in this cause in the sum of One Thousand Dollars ($1,000) be allowed to remain in its present form, save that personal sureties be substituted for those existing, and that said sureties, if attorney or attorneys of record, or officers of the State, or its political subdivisions, be required to endorse as said sureties in their personal capacity and not in their official capacity.

Provided, however, this order shall be in force and effect from and after the filing of proper surety bond by the Surplus Trading Company, a partnership, composed of Joseph Frenkel, Kalter-Cerf Merchantile Company and A. Schaap & Sons (which is a partnership composed of Abraham Schaap, Irving E. Schaap, Joseph M. Schaap and Morris A. chaap), S. Steinfeld & Company (a partnership composed of Nathan Steinfeld and Ferdinand Seligman), with one or more good and sufficient sureties, to be approved by the court or chancellor thereof, directed to the plaintiff in this cause, in the maximum sum of Twelve Thousand Dollars ($12,000), to the effect that it will pay to the plaintiff judgment, interest and costs which may be adjudged against it on the final termination of this cause, and it is so ordered.

[fols. 15-17] The plaintiff, by its solicitors, objected to the relief herein granted and ordered, and for cause therefor stated that this Court was without authority to so modify the restraining order in question to the extent of releasing the funds in question, and in lieu thereof the approving of the acceptance of a surety bond. The objection, however, being overruled, the solicitors for plaintiff asked that their exceptions be noted of record, and it is so ordered.

It appearing to the Court that the above order was made on May 17, 1924, the same is now entered nunc pro tunc by order of this Court (Record Book 70, page 509).

Bond on vacating of restraining order for $12,000.00, approved and filed May 24, 1924, omitted in printing.

[fol. 18] IN CHANCERY COURT OF PULASKI COUNTY

AMENDED AND SUBSTITUTED COMPLAINT—Filed June 19, 1924

Comes the plaintiff, Homer M. Adkins, as Sheriff and ex-officio Collector of Taxes for Pulaski County, Arkansas, by W. H. Donham, Prosecuting Attorney of the Sixth Judicial District of Arkansas, and Sam T. and Tom Poe, Special Counsel, and for cause of action against the defendants, states:

That the defendant, Surplus Trading Company, is a partnership composed of S. Steinfeld & Company, a co-partnership composed of Nathan Steinfeld and Ferdinand Seligman; A. Schaap & Sons, a co-partnership composed of Abraham Schaap, Ervin Schaap, Joseph Schaap and Morris Schaap; Joseph Frenkel, an individual; Kalter-Cerf Mercantile Company, a corporation organized and existing [fol. 19] under and by virtue of the laws of the State of New York, with its principal place of business in the City of New York and State of New York; that each and all of the individuals, firms and corporations composing the Surplus Trading Company are non-residents of Arkansas.

That Homer M. Adkins is the duly qualified and acting Sheriff and ex-officio Collector of Taxes for Pulaski County, Arkansas.

That the Camp Pike Honorary Commission and the Camp Pike Disposals Board are both associations of individuals, all residents of the State of Arkansas, and some of whom are residents of Pulaski County, Arkansas; that the members of said Commission and Board are acting as trustees of a fund received from the sale of surplus war materials at Camp Pike, Arkansas, which fund, after the payment of the expenses incident to the purchase and sale of the said surplus war materials, is to be used for the purpose of constructing and maintaining permanent improvements at Camp Pike, Arkansas, a Federal and State Reservation, and for the further purpose of assisting in the advancement of the Arkansas National Guard; that said Commission and Board was created by a proclamation issued by His Excellency, the Honorable Thomas C. McRae, Governor of the State of Arkansas, and the members thereof appointed by the same authority; that A. D. Cohn,

Lloyd England, W. S. Mitchell, H. F. Fredeman, Geo. L. Sands, James A. Shipton, W. B. Smith, Moorhead Wright, H. L. Remmel, W. F. Bridewell and John R. Fordyce compose the Camp Pike Honorary Commission and the Camp Pike Disposals Board.

That the England National Bank is a banking corporation organized and existing under and by virtue of the laws [fol. 20] of the United States of America, with its principal place of business in Little Rock, Pulaski County, Arkansas.

That the Union Trust Company is a banking corporation organized and existing under and by virtue of the laws of the State of Arkansas, with its principal place of business in Little Rock, Pulaski County Arkansas.

That the Peoples Savings Bank is a banking corporation organized and existing under and by virtue of the laws of the State of Arkansas, with its principal place of business in Little Rock, Pulaski County, Arkansas.

That the Bankers Trust Company is a banking corporation organized and existing under and by virtue of the laws of the State of Arkansas, with its principal place of business in Little Rock, Pulaski County, Arkansas.

That the Missouri Pacific Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri; authorized to do business in Arkansas, and is engaged in the business of common carrier and as such owns and operates railroads in Pulaski County, Arkansas, for the purpose of transportation of freight and passengers.

That the Chicago, Rock Island & Pacific Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Iowa, authorized to do business in Arkansas, and is engaged in the business of common carrier, and as such owns and operates railroads in Pulaski County, Arkansas, for the purpose of transportation of freight and passengers.

[fol. 21] That the St. Louis Southwestern Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, authorized to do business in Arkansas, and is engaged in the business of common carrier, and as such owns and operates railroads

in Pulaski County, Arkansas, for the purpose of transportation of freight and passengers.

That on and after January 1, 1922, the defendant, Surplus Trading Company, sold and shipped certain personal property over the Missouri Pacific Railroad Company, Chicago Rock Island and Pacific Railway Company and the St. Louis Southwestern Railway Company's lines from Little Rock, Arkansas; part of the personal property consisted of surplus war materials purchased from the Camp Pike Disposals Board and sold and shipped to various parties within and without the State of Arkansas. That plaintiff is unable to state the amount or value of said property so shipped, or the names of the consignees to whom the same was shipped, but that such information is within the control of the defendants Missouri Pacific Railroad Company, Chicago, Rock Island & Pacific Railway Company and the St. Louis Southwestern Railway Company; that the above named defendants have refused to furnish the plaintiff with this information.

[fol. 22] Plantiff states it is necessary for him to have this information in order to properly prepare for trial of this case.

That the Surplus Trading Company is and was required by the laws of the State of Arkansas to list with the Assessor of Taxes for each and every county wherein it has personal property, on or before the first day of June of each and every year, all personal property of which it is the owner and which it holds as such owner within the State of Arkansas.

That the defendant, Surplus Trading Company, has failed and refused and neglected to list with the Assessor of Taxes for Pulaski County, Arkansas, all pesonal psoperty of which it is and was the owner within the State of Arkansas, and particularly within Pulaski County in said State, for the years 1922 and 1923.

That the Assessor of Taxes for Pulaski County, under and by virtue of the laws of the State of Arkansas and as directed by said law, proceeded to and did list and assess [fol. 23] for the purpose of taxation all personal property owned by the defendant, Surplus Trading Company, and situated within the State of Arkansas and particularly within the County of Pulaski and State aforesaid.

That the Assessor of Taxes for Pulaski County, Arkansas, under and by virtue of the laws of the State of Arkansas assessed, for the purpose of taxation for the year 1922, all personal property owned by the defendant, Surplus Trading Company, and situated within the State of Arkansas, and particularly within the County of Pulaski in said state, in the amount and sum of One Hundred Thirty-five Thousand ($135,000) Dollars.

That there was due on the 10th day of April, 1923, as taxes on said property the sum of Four thousand six hundred seventy three and 26/100 ($4,673.26) Dollars, for the year 1922.

That the said sum of Four thousand six hundred seventy three and 26/100 ($4,673.26) Dollars, having remained past due and unpaid on and after the 10th day of April, 1923, there is now due, in addition to the said sum, the following sums:

First. Due as penalty for failure to assess said property for the purpose of taxation, the sum of Eight hundred sixty-five and 25/100 ($865.25) Dollars:

Second. Due for failure to pay said tax on said property on or before the 10th day of April, 1923, the sum of Eleven hundred sixty eight and 32/100 ($1,168.32) dollars;

Third. Due as Collector's costs for failure to pay said taxes on said property on or before the 10th day of April, 1923, one and 25/100 ($1.25) dollars.

[fol. 24] That there now remains past due and unpaid as taxes, penalties and costs for the year 1922 upon the property of the Surplus Trading Company the sum of Six Thousand Seven Hundred Eight and 8/100 ($6,708.08) Dollars.

That the Assessor of Taxes for Pulaski County, Arkansas, under and by virtue of the laws of the State of Arkansas, assessed for the purpose of taxation for the year 1923 all personal property owned by the defendant, Surplus Trading Company, and situated within the State of Arkansas and particularly within the County of Pulaski, in said State, in the amount and sum of Sixty-five Thousand ($65,000) Dollars.

That there was due on the 10th day of April, 1924, as taxes on said property the sum of Two thousand two hundred thirty-three and 83/100 ($2,233.83) Dollars, for the year 1923.

That the said sum of Two thousand two hundred thirty-three and 83/100 ($2,233.83) Dollars, having remained past due and unpaid on and after the 10th day of April 1924, there is now due, in addition to the said sum, the following sums:

First. Due as penalty for failure to assess said property for the purpose of taxation, the sum of Five hundred fifty-eight and 48/100 ($588.48) Dollars.

Second. Due for failure to pay said tax on said property on or before the 10th day of April, 1924, the sum of Six Hundred Ninety-eight and 8/100 ($698.08) Dollars.

Third. Due as Collector's costs for failure to pay said taxes on said property on or before the 10th day of April, 1924, One and 25/100 ($1.25) Dollars.

[fol. 25] That there now remains past due and unpaid as taxes, penalties and costs for the year 1923 upon the property of the Surplus Trading Company the sum of Three thousand Four Hundred Ninety-one and 64/100 ($3,491.64) Dollars.

That itemized and verified statements showing the amount of taxes, penalties and costs now due by said defendant, are attached hereto, marked Exhibits "A" and "B," and made a part of this amended and substituted complaint.

That a diligent search and inquiry have been made for the purpose of locating personal property belonging to the Surplus Trading Company in order to levy upon same for the purpose of securing the payment of said taxes, penalties and costs due herein.

That after making said search and inquiry for said property, the sheriff and ex-officio collector of taxes for Pulaski County, Arkansas, states that he is unable to locate any personal property belonging to or which is owned by the defendant, Surplus Trading Company; plaintiff states, however, that A. D. Cohn, Lloyd England, W. S. Mitchell, H. F. Fredeman, Geo. L. Sands, James A. Shipton, W. B.

Smith, Moorhead Wright, H. L. Remmel, W. F. Bridewell and John R. Fordyce, composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board, and each of them, and England National Bank, Union Trust Company, Peoples Savings Bank and the Bankers Trust Company, and each of them, have in their hands and possession certain chattels, goods, moneys, credits and effects belonging to and which are the property of the said Surplus Trading Company. That said chattels, goods, moneys, [fol. 26] credits and effects are of the value of Twenty-five thousand ($25,000) Dollars.

That, as required by law, demands have been made by the sheriff and ex-officio Collector of Taxes for Pulaski County, Arkansas, for payment of said taxes, penalties and costs, upon A. D. Cohn, Lloyd England, W. S. Mitchell, W. F. Bridewell, H. F. Fredeman, Geo. L. Sands, James A. Shipton, W. B. Smith, Moorhead Wright, H. L. Remmel and John R. Fordyce, Individually and as members of and composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board.

That a copy of said demands so served are attached hereto marked Exhibits "C" and "D" and made a part of this amended and substituted complaint.

That the commissioners above named are trustees of a fund belonging to and which is the property of the defendant, Surplus Trading Company.

That the plaintiff is without a plain, adequate and complete remedy at law with which to enforce the collection of said taxes due herein, and, therefore, brings his suit in a court of equity.

That unless restrained by this court the Camp Pike Honorary Commission and the Camp Pike Disposals Board will pay over to said defendant, Surplus Trading Company, a certain sum of money now due by said Commission to the said defendant, Surplus Trading Company, and that the said defendant, Surplus Trading Company, is a non-resident of the State of Arkansas, and has no other property in the State of Arkansas except that held by said [fol. 27] Commission and Board; that if said payment be not restrained by this court that the State of Arkansas and her various county, municipal and school taxing subdivisions herein will be deprived of their only remaining

source to collect said taxes, penalties and costs due it, as aforesaid.

Wherefore, plaintiff asks that this court make an order requiring the Missouri Pacific Railroad Company, Chicago Rock Island and Pacific Railway Company and the St. Louis Southwestern Railway Company, its agents and employees to furnish plaintiff with a list of all shipments made by the defendant, Surplus Trading Company, either in its own name, or in any other name, under which said shipments were made, together with a description of the property contained in said shipments, the dates of the shipments and the names and addresses of the consignees of said shipments; that the State of Arkansas and her various political subdivisions have judgment against the defendant, Surplus Trading Company, in the amount and sum of Six Thousand Seven hundred eight and 8/100 ($6,708.08) Dollars, for taxes, penalties and costs for the year 1922, and Three Thousand Four Hundred Ninety-one and 64/100 ($3,581.64) Dollars, for taxes, penalties and costs for the year 1923; and all his costs herein expended; that the defendants, A. D. Cohn, Lloyd England, W. S. Mitchell, H. F. Fredeman, Geo. L. Sands, James A. Shipton, Moorhead Wright, H. L. Remmel, W. F. Bridewell and John R. Fordyce, individually and as members of and composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board, and each of them, and the England National [fol. 28] Bank, Union Trust Company, Peoples Savings Bank and Bankers Trust Company, and each of them, be restrained from paying out and over, or otherwise disposing, disbursing or expending any part or portion of the funds now in their possession belonging to the defendant, Surplus Trading Company, pending a final adjudication of this matter before this court; that A. D. Cohn, Lloyd England, W. S. Mitchell, H. F. Fredeman, Geo. L. Sands, James A. Shipton, W. B. Smith, Moorhead Wright, H. L. Remmel, W. F. Bridewell and John R. Fordyce, individually and as members of and composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board, and each of them, and the England National Bank, Union Trust Company, Peoples Saving Bank and Bankers Trust Company, and each of them, be required to answer within twenty days

from the date of service of summons herein, disclosing the nature, value, character and amount of the chattels, goods, moneys, credits and effects now in their hands and possession and under their control, belonging to and which is the property of the Surplus Trading Company, or any of its constituent members, whose names are set out in the second paragraph of this complaint; and that upon a final hearing of this cause the said Camp Pike Honorary Commission and the Camp Disposals Board and the England National Bank, Union Trust Company, Peoples Saving Bank and the Bankers Trust Company be ordered to pay into the registry of this court the sum of Ten thousand one hundred ninety-nine and 72/100 ($10,199.72) Dollars, for the use and benefit of the State of Arkansas and her various [fols. 29-31] political subdivisions herein, for taxes due for the years 1922 and 1923 by the defendant, Surplus Trading Company, and for all other necessary and proper relief.

Homer M. Adkins, as Sheriff and ex-Officio Collector of Taxes for Pulaski Co., Arkansas. W. H. Donham, Prosecuting Attorney for the 6th Judicial District of Arkansas. Sam T. & Tom Poe, J. C. Marshall, Special Counsel.

(Endorsed:) Filed and warning order issued and by leave of court W. B. Sanders is appointed attorney ad litem for the non-resident defendant. This 19th day of June, 1924. H. S. Nixon, Chancery Clerk, by G. F. H., D. C.

[fol. 32] EXHIBIT "C" TO AMENDED COMPLAINT

To the Camp Pike Honorary Commission, Camp Pike Disposals Board, Lloyd England, A. D. Cohn, W. S. Mitchell, H. F. Fredeman, George L. Sands, James A. Shipton, W. B. Smith, Moorhead Wright, H. L. Remmel, W. F. Bridewell, John R. Fordyce, individually, and as members of and composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board, and England National Bank and Peoples Savings Bank:

Demand

Demand is hereby made on you, and each of you individually, collectively and as members of and composing

the Camp Pike Honorary Commission and the Camp Pike Disposals Board, that you forthwith pay to me, as Sheriff and Collector of Pulaski County, Arkansas, the amount of taxes, penalties and costs, due me as such Collector of Pulaski County, Arkansas, for the year 1922, due and payable by the Surplus Trading Company; said amount of taxes, penalties and costs being as follows:

Amount of taxes	$4,673.26
Penalty for non-assessment	865.25
Penalty for non-payment	1,168.32
Costs	1.25
Total amount due	$6,708.08

Dated this 26th day of May, 1923.

W. H. Donham, Prosecuting Attorney for the 6th Judicial District of Arkansas. Homer M. Adkins, Sheriff and Collector, Pulaski County, Arkansas. Tom Poe, Special Counsel.

[fol. 33] EXHIBIT "D" TO AMENDED COMPLAINT

To the Camp Pike Honorary Commission, Camp Pike Disposals Board, Lloyd England, A. D. Cohn, W. S. Mitchell, H. F. Fredeman, George L. Sands, James A. Shipton, W. B. Smith, Moorhead Wright,. H. L. Remmel, W. F. Bridewell, John R. Fordyce, individually and as members of and composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board, and England National Bank and Peoples Savings Bank:

Demand

Demand is hereby made on you, and each of you, individually, collectively and as members of and composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board, that you forthwith pay to me, as Sheriff and Collector of Pulaski County, Arkansas, the amount of taxes, penalties and costs, due me as such Collector of Pulaski County, Arkansas, for the year 1923, due and pay-

able by the Surplus Trading Company, said amount of taxes, penalties and costs being as follows:

Amounts of taxes	$2,233.83
Penalty for non-assessment	558.48
Penalty for non-payment	698.08
Costs	1.25
Total amount due	$3,491.64

Dated this 13th day of May, 1923.

W. H. Donham, Prosecuting Attorney for the 6th Judicial District of Arkansas. Homer M. Adkins, Sheriff and Collector, Pulaski County, Arkansas. Tom Poe, Special Counsel.

[fol. 34] In Chancery Court of Pulaski County

[Title omitted]

Separate Answer of Surplus Trading Company—Filed July 22, 1924

The Surplus Trading Company is a partnership composed of Joseph Frenkel, Kalter-Cerf Mercantile Company, and A. Schaap & Sons (which is a partnership composed of Abraham Schaap, Ervin E. Schaap, Joseph M. Schaap and Morris Schaap), S. Steinfeld & Company (a partnership composed of Nathan Steinfeld and Ferdinand Seligman).

For answer to the amended and substituted complaint of plaintiff, defendant says that it had no property in Pulaski County subject to assessment for taxes in the years 1922 or 1923.

It denies that the Assessor of Taxes for Pulaski County proceeded, as directed by law, to list for the purpose of taxation all or any personal property owned by defendant and situated within the State of Arkansas, or within Pulaski County in said state, for the years 1922 or 1923; denies that the Assessor of Taxes for Pulaski County, under and by virtue of law, assessed for taxation for the year 1922 personal property owned by this defendant within the

State, and particularly within Pulaski County, the sum of One Hundred Thirty-Five Thousand ($135,000) Dollars, and denies that there was due on the 10th day of April, 1923, as [fol. 35] taxes against the said property, the sum of Four Thousand Six Hundred Seventy-three and 26/100 — ($4,673.26) or any other amount; denies that the Assessor or Taxes for Pulaski County by virtue of law assessed for taxation for the year 1923 personal property owned by this defendant within the State, and particularly within Pulaski County, the sum of Sixty-five thousand ($65,000) Dollars; and denies that there was due on the 10th day of April, 1924, as taxes against the said property the sum of Two Thousand Two Hundred Thirty Three and 83/100 — ($2,233.83), or any other amount.

Defendant denies that there is any penalty due on any such alleged tax assessments, either for failure to assess or failure to pay, or the collector's costs, and denies that there is past due and unpaid as taxes on personal property of this defendant for the year 1922 the sum of Six thousand Seven Hundred Eight and 8/100 ($6,708.08) Dollars, or any other amount, or for the year 1923 the sum of Three thousand four hundred ninety-one and 64/100 ($2,491.64) Dollars, or any other amount.

The defendant says:

First. That the Tax Assessor for Pulaski County made no assessment in the year 1922 against any specific personal property which he considered belonging to the Surplus Trading Company; and the fact is that he did not consider or attempt to value any personal property belonging to this defendant; that late in the summer in the year 1922 someone occasionally remarked to the Assessor that he was informed and believed that the Surplus Trading Company had some property subject to taxes, and that some of it was in the Terminal Warehouse and some of it was money in the bank; [fol. 36] that without knowing what such alleged property was, or the value of any part of it, and without making any attempt to ascertain the amount or value of any such alleged property, said Assessor arbitrarily listed on his assessment list personal property in the Terminal Warehouse of the taxable value of $100,000, and other personal property $35,000.

Second. That the Assessor for Pulaski County was not authorized to make any assessment of personal property for the year 1922; but, in fact, prior to the session of the General Assembly of the State of Arkansas in the year 1917, the Assessors of all the counties in the State were authorized and directed by law to make the tax assessments, but at the session of the said General Assembly Act No. 234 was duly passed and approved, changing the then method of tax assessments by the County Assessor and substituting instead tax assessment by Township Boards, whereby the Assessor, in connection with other members of the Township Board, made the assessment for taxes, and under said law the County Assessor alone could make no valid assessment. That said act repealed all prior laws in conflict therewith and repealed the prior laws conferring the power and authority on the County Assessor to make the tax assessments.

That the General Assembly at the session in the year 1919 passed Act No. 477, applying only to counties exceeding 75,000 population, in which class was Pulaski County, and said act expressly abolished Township Boards of Assessment and provided for Boards of Equalization, the duty and power of the Board of Equalization not being to assess taxes.

[fol. 37] The General Assembly of the year 1923 passed act No. 314, which applied only to counties having only a population in excess of 75,000 inhabitants, and by this act the County Assessor was authorized and charged with the duty of making assessments of property for purposes of taxation. So that after the passage of the said act of the General Assembly in the year 1917, until its repeal in the year 1919, prior laws authorizing the assessment of property by the County Assessors only were repealed, and the so-called Township Board of Assessment functioned as a tax-assessing body until the passage of the said act of the General Assembly of 1919, which abolished the Township Assessing Board and substituted nothing in its place to make tax assessments. Therefore, the County Assessor who undertook to make the assessment on which this suit is based, in the summer of the year 1922, had no authority of law in that year to make any assessments.

Third: This defendant had no property in Pulaski County subject to assessment in the year 1922, and had no money in the bank subject to assessment in Pulaski County. Under the law in force, requiring the valuation of property for taxation in the year 1922 by the property owners who make a return thereof, such property was required to be listed and valued according to its value on the first day of May (Section 9889 C. & M. Digest). This defendant had no property in Pulaski County on that date.

On or about the 6th day of May, 1922, defendant purchased from the United States Government a lot of blankets and at the time this defendant purchased said blankets, [fol. 38] which was after the first day of May, 1922, and prior to that time, said blankets were owned by the United States Government and in its custody at Camp Pike in Pulaski County, and not subject to taxation. That defendant bought said blankets intending to transport them as fast as transportation could be secured to destinations in other states, with few exceptions, and that as soon as it bought said blankets it had them transported to the Terminal Warehouse Company, in the city of Little Rock, to be there loaded in railroad cars and shipped to their destination in other states, which was done, and the entire movement of said blankets was a movement in interstate commerce, the movement from Camp Pike to the Terminal Warehouse being the initial part of the continuous movement of said goods in interstate commerce; and, moving in interstate commerce, the said blankets were not subject to taxation in the State of Arkansas.

Defendant further says that it had no money whatever in the bank in Pulaski County in the year 1922 or 1923; that the Camp Pike Honorary Commission, described in the complaint herein, being a charitable organization and not organized for profit, it had some funds in the bank, realized from the sale of certain properties it had made, and it was contemplated that out of said funds defendant would be paid a part of what might eventually prove to be the funds realized from the sale of goods; but such profits had not been ascertained in the year 1922 or 1923, and have not been ascertained *uet*; nor has it been ascertained that there will be any funds, as the United States Governments asserts claims against the Camp Pike Honorary Commission which

[fol. 39] this defendant is informed exceed the fund Camp Pike Honorary Commission had in the bank in the year 1922 or 1923.

Wherefore, defendant prays that plaintiff's suit be dismissed for want of equity, that it have its costs herein expended, and for all other and proper relief to which it may be justly entitled.

Rose, Hemingway, Cantrell & Loughborough, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 40] In Chancery Court of Pulaski County

[Title omitted]

Decree

On this day this cause coming on to be heard, and plaintiff, Homer M. Adkins, as Sheriff and ex-officio Collector of Taxes for Pulaski County, Arkansas, appearing by his solicitors, J. C. Marshall and Tom Poe, and the defendant, Surplus Trading Company, a co-partnership composed of S. Steinfeld & Company, a co-partnership composed of Nathan Steinfeld and Ferdinand Seligman; A. Schapp & Sons, a co-partnership composed of Ervin Schaap, Joseph Schaap and Morris Schaap; Joseph Frenkel, an individual; Kalter-Cerf Mercantile Company, a corporation organized and existing under and by virtue of the laws of the State of New York, appearing by its solicitors, Rose, Hemingway, Cantrell & Loughborough, and this matter being considered on the complaint and amended and substituted complaint and answers thereto, and their exhibits, and oral testimony of witnesses Charles Braun, W. B. Miller and W. S. Mitchell, the same being taken down in shorthand by the official stenographer of this court under stipulation of counsel for both parties and court order that same was to be transcribed and filed as depositions in this cause and made a [fol. 41] part of this record, and also the various depositions filed in this cause, stipulations, documents, certifi-

cates, injunction bond of Homer M. Adkins, Sheriff and ex-officio Collector of Taxes for Pulaski County, Arkansas, filed pursuant to the court order granting the preliminary injunction, bond of Surplus Trading Company filed pursuant to the court order dissolving and vacating the preliminary injunction, all of which were filed as evidence in this cause and made a part of the record herein; and both parties being heard as to their respective contentions, and the court being well and sufficiently advised as to all matters of law and fact in the premises, finds for the defendant Surplus Trading Company, and that the preliminary injunction herein ought not to have been granted.

It is therefore decreed, ordered and adjudged that the complaint and the amended and substituted complaint herein be dismissed for want of equity and that the costs of this proceeding be assessed to the plaintiff.

On motion being made by defendant, Surplus Trading Company, for the assessment of damages in its favor pursuant to the terms of the plaintiff's temporary injunction bond against Homer M. Adkins, Sheriff and ex-officio Collector of Taxes of Pulaski County, Arkansas, and Charles E. Moyer and Tom Poe, and each of them, the court having before it all of the pleadings and evidence in this cause and the response of plaintiff and his sureties, and being well and sufficiently advised as to all matters of law and fact [fol. 42] in the premises, finds that defendant, Surplus Trading Company has been damaged in the sum of Two hundred sixty-one and 6-/100 ($261.60) Dollars, of which Two hundred Forty ($240) Dollars represents the premiums heretofore paid by Surplus Trading Company to the United States Fidelity & Guaranty Company, as surety on the bond filed pursuant to the court order dissolving and vacating the preliminary injunction, and twenty-one and 60/100 ($21.60) Dollars represents interest on said premium payment amounts expended to date; and it is, therefore, adjudged and decreed that Surplus Trading Company, a co-partnership composed of S. Steinfeld & Company, a co-partnership composed of Nathan Steinfeld and Ferdinand Seligman; A. Schaap & Sons, a co-partnership composed of Irvin Schaap, Joseph Schaap and Morris Schaap; Joseph Frenkel, an individual; Kalter-Cerf Mercantile Company, a corporation organized and existing under and by virtue of

the laws of the State of New York, do have and recover from Homer M. Adkins, Sheriff and ex-officio Collector of Taxes of Pulaski County, Arkansas, and Charles E. Moyer and Tom Poe, and each of them, the sum of $261.60, and its costs as upon a judgment at law, which adjudged amount shall bear interest at the rate of six per centum per annum until paid, for which writs of garnishment or execution may issue.

The plaintiff, Homer M. Adkins, Sheriff and ex-officio Collector of Taxes, of Pulaski County, Arkansas, and Charles E. Moyer and Tom Poe, sureties on the injunction bond, object and except to the findings of the court, both as to law and facts, and ask that the same be noted of record, which is accordingly done, and pray an appeal to the Supreme Court of Arkansas, which appeal is hereby granted.

June 7, 1926.

(Record Book 75, page 7.)

[fol. 43] In Chancery Court of Pulaski County

Statement of Evidence

Ernest W. Martineau, a witness for the plaintiff, being first duly sworn, testified as follows:

Direct examination.

Mr. Poe:

Question. What is your name?

Answer. Ernest W. Martineau.

Q. Where do you live?

A. Little Rock, Arkansas.

Q. Are you connected with the office of the Collector of Taxes of Pulaski County, Arkansas?

A. I am.

Q. What position do you hold?

A. Chief Clerk in Tax Collector's office of Pulaski County, Arkansas.

Q. What are your duties as Chief Clerk in Tax Collector's office of Pulaski County, Arkansas, with reference to being the custodian of the tax records?

A. I figure the settlements, O. K. charges and credits and figure the settlements with the State, County and City.

Q. For the personal property — due to the State, County and City by the taxpayers of Pulaski County, Arkansas?

A. Yes, sir.

Q. Do you have the books in your office showing the personal property tax due by the taxpayers of Pulaski County, Arkansas for each year?

A. I have.

[fol. 44] Q. Do you recall if there was any personal property tax assessment against the Surplus Trading Company for the year 1922?

A. I do.

Q. I will ask you if the statement which I hand you is a true statement of the personal property tax due by Surplus Trading Company for the year 1922, with the penalty and cost for non-payment?

A. It is.

Q. I will ask you if the statement blank which I now hand you is a true statement of the personal property tax due by Surplus Trading Company for the year 1923?

A. It is.

Q. I will ask you to attach both of these statements to your deposition and make them exhibits thereto?

A. I will.

Said above mentioned statements are marked respectively Exhibits 1 and 2 to the deposition of E. W. Martineau, and are next hereto attached.

Q. What is the amount due for the year 1922?

A. $6,924.27.

Q. And what is the amount due for the year 1923?

A. $3,491.61.

Q. Does that include the penalty and costs?

A. Yes.

Q. Has any part of that tax been paid?

A. It has not.

Q. Has the Collector made any effort to collect it?

A. He has.

[fol. 45] EXHIBIT No. 1

Tax and Assessor's Books Open the First Monday in January and Close 10th day of April, Each Year

1923

	Valuation	Taxes
Value personal Property, —; Twp. Dog Tax, —; Road Tax, —	65,000	2,233.83
Penalty for Non-Assessment of Personal Property as per Tax Books	.....	558.46
Penalty for Non-Payment of Personal Property	.....	698.07
Collector's Cost	.....	1.25
Total, as per Tax Books	65,000	3,491.61

Collector's Office, Pulaski County, Arkansas

Little Rock, Ark., —— —, 1924.

Received of Surplus Trading Co. — dollars, Taxes for the year 1923, upon the property herein described as charged on Tax Books.

Please fill in your address:—Street No., —; City, ——; State, ——.

—— ——, Sheriff and ex Officio Collector of Taxes, Pulaski County, Ark., by —— ——, D. C.

[fol. 46] EXHIBIT No. 2

Tax and Assessor's Books Open the First Monday in January and Close 10th day of April, Each Year

1922

	Valuation	Taxes
Value personal Property, —; Twp. Dog Tax, —; Road Tax, —	35,000	1,211.57
Penalty for Non-Assessment of Personal Property as per Tax Books	.....	865.25
Penalty for Non-Payment of Personal Property	.....	1,384.60
Collector's Cost	.....	1.25
Total, as per Tax Books	135,000	6,924.27

Collector's Office, Pulaski County, Arkansas

Little Rock, Ark., —— —, 1924.

Received of Surplus Trading Co. — dollars, Taxes for the year 1923, upon the property herein described as charged on Tax Books.

Please fill in your address:—Street No., —; City, ——; State, ——.

—— ——, Sheriff and ex Officio Collector of Taxes, Pulaski County, Ark., by —— ——, D. C.

[fol. 47] W. S. MITCHELL, a witness for the plaintiff, being first duly sworn, testified as follows:

Direct examination.

Mr. Poe:

Question. What is your name?

Answer. W. S. Mitchell.

Q. Where do you live?

A. Little Rock, Pulaski County, Arkansas.

A. Are you a tax payer of Pulaski County, Arkansas?

A. I am.

Q. How old are you, Mr. Mitchell?

A. 58 years old.

Q. How long have you lived in Pulaski County, Arkansas?

A. Since November 5, 1877.

Q. What is the Camp Pike Honorary Commission?

A. The Camp Pike Honorary Commission is an honorary body acting as trustees for the Governor, the National Guard and the public interests.

Q. For what purpose?

A. For the disposal and sale of surplus war material, the property of the War Department at Camp Pike, Arkansas.

Q. Will you give us the name of the persons composing the Camp Pike Honorary Commission?

A. Lloyd England, A. D. Cohn, W. B. Smith, W. S. Mitchell, H. F. Fredeman, George L. Sands, Jas. A. Shipton, Moorhead Wright, H. L. Remmel, W. F. Bridewell, and John R. Fordyce.

[fol. 48] Q. What is the Camp Pike Disposals Board?

A. The trading name adopted by the Commission at the suggestion of Mr. Max Kalter.

Q. Are you a member of the Camp Pike Honorary Commission?

A. I am a member and the Secretary of the Commission.

Q. What is the Surplus Trading Company, Mr. Mitchell?

A. The Surplus Trading Company——

Q. Is it a partnership or a corporation?

A. A partnership composed of four firms, individuals and corporations, as follows: S. Steinfeld & Company, a co-partnership composed of Nathan Steinfeld and Ferdinand Seligman; A. Schaap & Sons, a co-partnership composed of Abraham Schaap, Erwin Schaap, Joseph Schaap and Morris Schaap; Joseph Frenkel, an individual, and Kalter-Cerf Mercantile Company, a corporation organized and existing under and by virtue of the laws of the State of New York.

Q. Do you know where Surplus Trading Company has its principal office?

A. Broadway, New York City.

Q. Do you know if any of the individuals, co-partnerships and corporations composing the Surplus Trading Company, are residents of the State of Arkansas?

A. To the best of my knowledge and belief none of them is.

* * * * * * *

Q. Did Surplus Trading Company buy any of the surplus war material at Camp Pike, Arkansas, from the Camp Pike Honorary Commission, or Camp Pike Disposals Board, in the year 1922?

[fol. 49] A. They bought prior to the first auction property aggregating one hundred twenty thousand ($120,000) Dollars in value.

Mr. Cherry: We object to that. The records of the Commission are the best evidence of that; also it is indefinite.

Q. Of what did that property consist, Mr. Mitchell, if you recall?

A. The minutes of the Executive Committee, June 8, 1922, shows that A. D. Cohn reported the sale for cash by him in Washington to the Kalter-Cerf Mercantile Company of approximately 40,000 O. D. flannel over-size shirts at a price of $1.40 per shirt——

Mr. Cherry: I object to that; it is irrelevant.

A. (continued). —the same minutes shows approval of this action by the Committee.

Q. Where were these shirts located when sold?

A. In the surplus property warehouse, Camp Pike.

Q. Pulaski County, Arkansas?

A. Yes, sir.

Q. What was the exact amount of that, Mr. Mitchell?

A. $56,000.

Q. How many shirts?

A. 40,000.

Q. At how much per shirt?

A. $1.40 per shirt.

Q. Now Mr. Mitchell, did I understand you to say that [fol. 50] this sale was made by Mr. A. D. Cohn, representing the Camp Pike Honorary Commission, to the Kalter-Cerf Mercantile Company in the City of Washington?

A. The contract between the Honorary Commission and Surplus Trading Company is dated May 23, 1922, and the record of this sale of flannel over-size shirts is June 8, 1922.

Q. But the sale happened after that date, did it not?

A. Not according to the records.

Q. The agreement for the sale was consummated before that date while Mr. Cohn was in Washington?

A. Our records show that the Secretary of War made the sale to the Commission on basis of inventories of surplus property at Camp Pike as of March 30, 1922, which inventory included the shirts above mentioned; but the award to the Commission was of May 8, 1922.

Q. How long did Mr. Cohn and Mr. England stay in Washington Consummating this sale for the Camp Pike Commission?

A. Our records show that the Secretary of War made the award of surplus property to Governor McRae for the Commission to be appointed by him, as of May 8, 1922, at the same time the Secretary of War advised Governor McRae and members of his party that he would award the blankets—some 90,000—to Surplus Trading Company, and that the value received by the Department for these blankets would be deducted from the price that the Commission would have to pay for all the property as listed in the in-

ventories upon which the purchase award was made to Governor McRae.

[fol. 51] Mr. Cherry: I object to that testimony as irrelevant, incompetent and inadmissible because it is hearsay.

Q. How long did Mr. Cohn and Mr. England stay in Washington after May 8th?

A. Governor McRae and Mr. England and Mr. Cohn and W. S. Mitchell comprised the party who had appeared in the public interest together with the Arkansas delegation and all appeared together with the Arkansas delegation, and all appeared before the Secretary of War at the time of the award to Governor McRae. Mr. Cohn was selected as Trustee to represent Governor McRae and the Commission to be later appointed by him——

Mr. Cherry: I object——

A. —Mr. England and Mr. Cohn remaining in Washington or New York where they were arranging for the consummation of the contract and negotiating with Mr. Kalter who was interested in making the contract with the Commission for the sale of the property. They did not return to Little Rock for possibly a week or ten days—Mr. Cohn remaining longer than Mr. England.

Q. You were in Washington on May 8, 1922?

A. I was.

Q. What did the Secretary of War indicate would be done with the surplus war property at Camp Pike if you did not agree to sell those blankets to Surplus Trading Company?

Mr. Cherry: We object to that question as being hearsay.

A. The Secretary of War stated he would award all sur-[fol. 52] surplus property, as advertised, to Governor McRae, representing the public interest, with the exception of the blankets, which were awarded to the Surplus Trading Company and that credit would be given for the price received by the Government for the blankets. There was no appeal from his decision.

Q. Then the Surplus Trading Company purchased 90,000 blankets direct from the War Department on or about the 8th of May, 1922?

A. Yes.

Mr. Sherry: I object.

Q. Where were those blankets stored?

A. At Camp Pike, in the warehouses.

Q. Do you know what price was paid by Surplus Trading Company for these blankets?

A. Only indirectly.

Q. Where did you get that information?

A. The Commission was awarded surplus property at Camp Pike on a basis of the inventory of March 30, 1922, and of the high bid on the property presented under the terms of the sale advertised by the War Department for sale of March 30, 1922. The price offered on the high bid was $338,000, and the price paid by the Commission finally was $140,000.

Mr. Cherry: I object to that on the ground it is irrelevant and hearsay.

Q. The difference between $140,000 and $338,000—both of these amounts being approximate amounts—is the amount deducted from the purchase price and which was [fol. 53] paid by Surplus Trading Company for the blankets?

A. Under the terms as set forth by the Secretary of War.

Q. Now, what kind of blankets were those, Mr. Mitchell?

Mr. Cherry: I object to that, on the ground it is hearsay.

A. The very best woolen blankets which had been provided to the soldiers for their use in service.

Q. Well, now you say Surplus Trading Company, composed of Kalter-Cerf Mercantile Company, Joseph Frenkel, S. Steinfeld & Company, and A. Schapp & Sons. This sale of shirts, which Mr. Cohn reported to the Commission, to the Kalter-Cerf Marcantile Company—what was the details or the reasons for making that sale to the Kalter-Cerf Mercantile Company?

Mr. Cherry: I object to that on the ground that it is irrelevant.

A. Mr. Cohn reported that there was some question as to whether those shirts might not be withdrawn and that knowing them to be the property of the Commission under the award, and seeing an opportunity to receive what he considered was a fair price for them, he made the sale.

Mr. Cherry: Now I object to that on the ground it is hearsay.

Q. Did the Camp Pike Honorary Commission have any money on hand with which to pay the United States Government or War Department for this surplus war property?

A. No, sir; it was not even organized.

Q. How did it get the money to pay the War Department? [fol. 54] A. As a final inducement to the Commission to make the contract as outlined in the letter between Mr. Kalter and Mr. Cohn, Mr. Kalter agreed that the Surplus Trading Company would put up a certificate of deposit covering the amount of the purchase by the Honorary Commission from the War Department, payable to the War Department under terms acceptable to the War Department, on the condition that the Commission would consider the interest and the bankers' discount as a joint expense account, which was agreed to.

Mr. Cherry: I object on the ground that it is irrelevant.

Q. Mr. Mitchell, how did the Camp Pike Honorary Commission treat this sale of woolen shirts which Mr. Cohn made to Mr. Max Kalter in settling for the purchase price of the same with Mr. Kalter, or whoever he might have represented?

A. Our records would be the final word on that, but my recollection is that no money was put up.

Mr. Cherry: I object to that as irrelevant.

Q. What is your recollection about that?

A. That the amount of the expenses due the Government, $140,000, Mr. Kalter was to have permission to keep the sales accounts, the proceeds of the sales accounts to offset the certificate of deposit.

Q. Then the Surplus Trading Company in its final adjustment of its account under its contract with Camp Pike Disposals Board and the Camp Pike Honorary Commission,

assumed and paid this account of Kalter-Cerf Mercantile Company for these shirts?

[fol. 55] Mr. Cherry: We object to that because it is leading and because it is irrelevant.

A. That was a regular Camp Pike Commission account under the contract.

Q. But you say the books will show whether any cash was actually received for the sale of those woolen shirts?

A. Yes, sir.

Q. Now, when these blankets were purchased by Mr. Kalter, representing the Surplus Trading Company, from the Government, you state they were stored at Camp Pike?

A. They were.

Q. Did he leave them there for any great length of time?

A. Practically all of those large items were shipped out over the railroad, or stored at the Terminal Warehouse.

Q. Terminal Warehouse—where?

A. Little Rock.

Q. Pulaski County, Arkansas?

A. Yes; under a mutual agreement between the Commission and Surplus Trading Company that the Terminal Warehouse was a safer place to carry property, where the insurance rates would be less than it was if stored in the warehouses at the Camp.

Q. Now, how long before you made this trip to Washington had Mr. Kalter and the Surplus Trading Company been in Little Rock, or at Camp Pike?

A. For some time prior to March 30th.

Q. They arrived here before March 30th?

[fol. 56] A. That is my recollection.

Q. Had Mr. Kalter, or Mr. Sagor, or any of his representatives or employees been here prior to May 8, 1922?

A. They had.

Q. For approximately how long, according to your recollection?

A. At irregular intervals for possibly sixty days.

Q. What had they been doing here for approximately sixty days prior to May 8, 1922, at these irregular intervals?

A. Checking up the inventory of surplus property at Camp Pike.

Q. What was the purpose of checking that inventory, Mr. Mitchell?

A. To prepare themselves for the bid at the auction that was advertised for March 30, 1922.

Q. The Surplus Trading Company had been intending to make some purchases direct from the War Department of the surplus material?

A. They put in the high bid for the property at the auction of March 30, 1922.

Q. Now, Mr. Mitchell instead of selling all of the surplus property to Surplus Trading Company on its bid to the War Department on March 30, 1922, the Camp Pike Honorary Commission was awarded all of the surplus property except the blankets?

A. That was the Secretary of War's statement.

Mr. Cherry: I object on the ground that it is hearsay.

Q. Were you present when that statement was made?

A. My recollection is that the leather goods were withdrawn. That would be a further reconcilement.

[fol. 57] Q. Were you present when this statement was made by the Secretary of War?

A. Yes.

Q. Where was it made?

A. In the office of the Secretary of War in Washington, D. C.

Q. Was Mr. Kalter present?

A. He was not.

Q. Who was present besides yourself?

A. The Director of Sales, the Secretary of War, the Assistant Secretary of War, Governor Thomas C. McRae, Lloyd England, A. D. Cohn, W. S. Mitchell, the Senators and Representatives comprising the Arkansas delegation.

Q. Now Mr. Mitchell, I want to ask you who put up this certificate of deposit; the Surplus Trading Company?

A. That was their agreement.

Q. They wrote a letter to Mr. Albert D. Cohn and Lloyd England, which letter was incorporated as a part of the contract which has already been introduced in evidence?

A. Yes.

Mr. Cherry: I object as leading, and, further, the original letter is the best evidence.

Q. In the same contract, I will ask you if there is a letter dated May 19, 1922, directed to Surplus Trading Company and signed by A. D. Cohn as Trustee for the Honorary Commission, acknowledging payment to the United States Government of $140,000, the purchase price of the Surplus material to the Honorary Commission?

A. There is.

[fol. 58] Mr. Cherry: I object to the introduction of that part of the contract, the original of which is the best evidence.

Q. I will ask you to refer to the contract which has been introduced in evidence (Exhibit "A") and state the contents of the contract with reference to sales made by the Surplus Trading Company of this war property and their obligation in there to make cash payments or account for these sales up to the amount of the Bankers' Acceptance which they furnished to pay the purchase price to the War Department.

Mr. Cherry: I object to that.

A. I will read as follows: "Until the Surplus Trading Company has been reimbursed for its said Bankers' Acceptance it shall not be required to make the cash payment under its credit guarantee to the bank or banks designated as depository at Little Rock, but may simply credit *to* the Honorary Commission with the amount of each such sale, rendering to the Honorary Commission a duplicate of each said sale and statement of the amount passed to the credit of the Honorary Commission and the date of said credit; but when the Surplus Trading Company have been fully paid the amount of said Bankers' Acceptance they shall remit to the Honorary Committee by checks for all credit sales within ten days after the date of each such sale, or deposit the amount of each credit sale in the bank or banks designated in Little Rock."

Q. Mr. Mitchell; after this contract was entered into the sales started, did they That is, the Surplus Trading Com-

[fol. 59] pany sold this surplus war property?

A. Our records show that the first sale of O. D. shirts was made on June 8, 1922, as approved by the Executive Committee; the confirmation by the Commission to the Sur-

plus Trading Company signed by A. D. Cohn, Trustee, for Honorary Commission, is dated Washington, D. C., May 19, 1922.

Mr. Cherry: I object on the ground that copy of the confirmation is not shown and it is the best of evidence.

Q. During the year 1922 from the sale of this war material was enough realized from the sales to entitle Surplus Trading Company to any cash as a part of the undivided profits, or part of the profits of sales?

A. The Camp Pike Honorary Commission operated purely as a Trustee in the ownership of the property at Camp Pike representing the War Department, first in the payment of the amount due the Department for the property; second, the payment of expenses in selling the property and the expenditure of any balance left to its credit for the National Guard and the beautification of the property at Camp Pike. The Commission did not operate for profit. The Surplus Trading Company operated for profit and the sales from the beginning of the operations until December 31, 1922, were largely in excess of the amount due the Government; so much so that the money distributed in the hands of the Commission to the credit of the Camp Pike Disposals Board, in which the Commission and the Surplus Trading Company shared according to the contract, was a very considerable amount, approximating to [fol. 60] the credit of Surplus Trading Company, $100,000.

Mr. Cherry: I object to that on the ground that it is indefinite.

Q. Do you know of any other property in Pulaski County, Arkansas, other than the blankets and the woolen shirts and cash in the bank, the property of the Surplus Trading Company during the year 1922?

A. I think Surplus Trading Company took certain property on the appraised valuation at the auction sales, or at private sales, the same as the Commission operated as a purchaser at the auction sales for certain property for the account of the National Guard, which the Commission felt was being sold too low at auction sales in view of the fact that the Camp was to be used for National Guard purposes under the Commission's plans.

Mr. Cherry: I object to that because it is irrelevant and based on what the witness thinks and not what he knows.

Q. You say you think that was the case; don't you know that to be a fact?

A. Our records show that it is a fact.

Q. Have you examined the records?

A. I have not.

Q. Will you examine them and tell us the facts about it? I will show you the statements later on. Now, you say this property was bid in by the Commission and also Surplus Trading Company for the account of the National Guard. [fol. 61] Did Surplus Trading Company buy anything for the account of the National Guard?

A. Not to my knowledge.

Q. What they bought was for their own account, was it not?

A. It was.

Q. You stated there were several private sales and several purchases also made at auction by Surplus Trading Company?

A. My recollection is to that effect.

Q. In addition to the woolen shirts and blankets. Now, with reference to the National Guard purchases made by the Camp Pike Honorary Commission, is it not a fact that after that account had been assumed by the Honorary Commission that same property was sold to Harris Brothers when you had a settlement, or when you closed out with Surplus Trading Company as distributing agents?

A. Yes, sir.

Mr. Cherry: We object to that as being irrelevant, and also leading.

A. It should be borne in mind that the leather goods were afterwards purchased from the War Department. The contract states that anything that was declared by the War Department to be surplus property, the Surplus Trading Company was to participate.

Q. Were the leather goods reserved by the War Department on May 8, 1922, which were located at Camp Pike, and were later purchased by the Honorary Commission from the War Department?

A. They were for the account of surplus property under [fol. 62] the contract.

Q. In which the Surplus Trading Company shared the profits?

A. The same as the rest of the contract.

Q. Have you any way of arriving at the amount of the leather goods?

A. Only by the minutes.

Q. Well, refer to them. (Refers to minute book.)

A. $46,853.33.

Q. Mr. Mitchell, I want to ask you about this money—the profits of the sales in which the Camp Pike Honorary Commission and the Surplus Trading Company was to share jointly. Did that remain in any bank or banks in Little Rock from December 31, 1922, up until a recent date?

A. Yes, sir.

Q. Do you recall now the approximate amount of that money that remained in the bank or was held here from December 31, 1922, until a recent date?

A. $113,000.

Q. That remained there during all the year 1923, did it not?

A. $88,000 of the amount was to the credit of the Camp Pike Disposals Board, a joint account, and under the contract of adjustment of the Kalter claim $25,000 was added to this amount, making a total of $113,000.

Q. This money was subject to the check of Max Kalter, or any person designated by him on behalf of the Surplus Trading Company, and A. D. Cohn, representing the Hon- [fol. 63] orary Commission, or such person as he might select?

Mr. Cherry: I object to that.

A. A designated representative of the Commission; yes.

* * * * * * *

STIPULATION IN LIEU OF THE TESTIMONY OF LOUIS B. STEGEL, A WITNESS FOR PLAINTIFF

"It is agreed between counsel for both parties hereto that the Surplus Trading Company sold and delivered to

Siegel-King Company, merchants of Little Rock, Pulaski County, Arkansas, on June 5th, 1922, ten (10) bales of blankets in question. The blankets were stored in the Terminal Warehouse in the City of Little Rock, County of Pulaski, State of Arkansas, on June 5th, 1922, when the sale and delivery of same was made to Siegel-King Company."

[fol. 64] W. T. DOROUGH, a witness for the plaintiff, being first duly sworn, testified as follows:

Direct examination.

Mr. Marshall:

Q. What is your name?
A. W. T. Dorough.
Q. What position do you occupy, or did you occupy in 1922?
A. County Assessor.
Q. Pulaski County, Arkansas?
A. Yes.
Q. State whether as Assessor of Pulaski County, Arkansas, you made an assessment on the 3rd of June, upon the personal property of the Surplus Trading Company?
A. I did.
Q. Look at the original assessment list for 1922, that I show you, and see if that is the one you made against that company?
A. Yes.
Q. Will you attach a copy of that list to your deposition and have the notary to make same as Exhibit "B"?
A. Yes, sir.

Said above mentioned assessment list is marked Exhibit "B" and is, in words and figures, as follows:

[fol. 65] Copy, 1922 Assessment List

Personal Property of Surplus Trading Co.

Address: c/o Terminal Warehouse (Ben Sager).
Township or Ward: ——.
School District No.: Office Marion Hotel.

$100,000

13. Value of Household and Kitchen Goods, Furniture and Supplies.....
14 Value of Goods and Merchandise that I am by law required to list as a merchant, the same being the average value of such merchandise in my possession or under my control during the year immediately preceding the first day of January, 1926. (Act 314.) Section 9942, C. & M. Digest. 200,000 stock bought at Camp Pike..... $100,000
15 Value of property which I am by law required to list as a banker, broker, or stock jobber. Blankets, breeches, shirts, etc...

Township: ——.
School District No.: L. R.
Road District No.: 1.

Sworn to and subscribed before me, this 6 day of June, 1922. Will T. Dorough, Assessor, by D., Dep. Assessor.

[fol. 66] Q. You made that statement upon information you had obtained at the time, and the Surplus Trading Company not having made an assessment?

A. Yes, sir.

Q. What was the amount of your assessment that you made of the personal property?

A. $100,000, I believe. It shows there.

Q. It states $200,000 worth of stock being at Camp Pike, and you divided that by two and made that assessment, as is customary?

A. Yes, sir.

Q. Now you may state whether that assessment list was passed on to your assessment books and your tax books filed?

A. Yes, sir; it was.

Q. What time did you file the books that fall?

A. I believe, Judge, the first Monday in September. The law has been changed, but it was around the first Monday in September.

Q. You filed the assessment books in time, containing this assessment referred to?

A. Yes, sir.

Q. And I suppose then the tax was extended on this and passed to the Clerk's office?

A. Yes, sir; in the general routine.

Q. Now you may state what you did, if anything, in the way of assessing the personal property of Surplus Trading Company for the year 1923?

[fol. 67] A. I don't recall that. I didn't bring my record on that. I thought the 1922 assessment was what you wanted.

Q. Did you make an assessment for the next year at all?

A. I cannot answer offhand whether I did or not. I would have to look at the records.

Q. Did you at any time make an assessment based upon money in the bank belonging to this Surplus Trading Company?

A. Yes, sir; it was made sometime in the fall of 1922.

Q. That was made in the fall of 1922?

A. Yes, sir; that is, for the year 1922.

Q. That was an assessment made for the year 1922?

A. Yes, sir.

Q. What year was the other assessment made for?

A. It was the year 1922, also.

Q. Was both of those assessments made for property held by them for 1922?

A. Yes.

Q. Then the assessment of money belonging to this Surplus Trading Company was made as an additional assessment to the other item?

A. Yes, sir; it was.

Q. How do you make items of assessment of that kind? What is the actual method of making that?

A. After the assessment books are filed we have a form there which enters all charges and credits, and a book called "Error List." This book is to take care of any additional charges or credits. This book, you might say, is a [fol. 68] supplemental book to the assessment book. We have, for the convenience of the county clerk and the sheriff; the Assessor's office—has a printed form "Charge Item" and "Credit Item," and we used the "Charge Item" in this case in which I made a charge for money in the Eng-

land National Bank against the Surplus Trading Company, and I forwarded it to the clerk, and the clerk charged the collector with that item.

Q. What was the amount of the charge item you made in that way?

A. About $30,000.

Q. Have you the original charge item that you filed at the time?

A. No, that would be in the county clerk's office, but I recall making the assessment.

Q. Do you recall whether it was $30,000 or $35,000?

A. No, I cannot. I would have to refer to the record.

Q. I believe you stated Surplus Trading Company did not make an assessment of its personal property?

A. It did not.

Q. You made this on your own——

A. On information I acquired from the Honorary Commission.

Q. Did you attach legal penalties to this on account of the failure to make the assessment, or was that done by other officers?

A. The records would have to show that.

Q. How do you do that?

A. We are supposed to charge a 25% penalty.

Q. Well, did you do that in this case?

[fol. 69] A. Yes, sir. If it was not done, it was just an error of the clerk.

Q. Did you make an assessment of $65,000 for the year 1922 against Surplus Trading Company?

A. I would have to refer to the records. I cannot give the exact figures. When I come back after dinner I can give you the information about 1923.

Q. Can you get the original list of that assessment?

A. It should be on file in my office.

(Adjournment until 1:30 o'clock P. M.)

Q. Mr. Dorough in the forenoon you referred to the assessment you made in 1922 against Surplus Trading Company, alsq to the charge item in addition to that assessment. Now I want to ask you if you made an assessment against this same company for the year 1923?

A. I did.

Q. Look at the assessment list which I show you and state whether that is the original list?

A. Yes, sir; I instructed my deputy to make that.

Q. You have attached to that, also, an item for an amount of $65,000. Just explain that.

A. After the assessment books had been filed, this is the only procedure we can use for authority to the clerk to charge the collector.

Q. I see this item was made on February 28?

A. Yes.

[fol. 70] Q. Now, just what was the basis of your making that assessment? What information did you have and why did you make this assessment in 1924?

A. Well, in conversation with Mr. W. S. Mitchell I was informed that there was something like $130,000 due Surplus Trading Company out of the proceeds of sales at Camp Pike, and I considered that authority for them having the moneys and I made the assessment accordingly.

Q. You made an assessment of $65,000 on that idea?

A. Yes.

Q. They did not make any assessment themselves?

A. No, sir; I have no record of them having made an assessment.

Q. And you proceeded in the usual way to assess them yourselves?

A. I did.

Q. According to the best information that you could get?

A. Yes, I did.

Q. Will you attach to your deposition a copy of the original assessment list and the charge item you have just referred to?

A. I will.

(Said above mentioned list is marked Exhibit "D" and the Charge Item is marked Exhibit "E" and are, in words and figures, as follows:)

[fol. 71] EXHIBIT "D"

1923 Assessment List

Personal Property of Surplus Trading Company

Address: New York City, N. Y.

Township or Ward: ——.

School District No.: L. R.
Road District No. ——.
Poll Tax, White: Firm.
Poll Tax, Colored: ——.
1. No. Dogs over 4 months old: No.
2. 21 to 45—Act 433: No.
$65,000.

Sworn to and subscribed before me, this 28th day of February, 1923. Will T. Dorough, Assessor, by Marie Miller, Dep. Assessor.

Exhibit No. D to testimony of W. T. Dorough. H. F. Bracey, Official Reporter.

[fol. 72] EXHIBIT "E"

Copy

Feb. 28th, 1924.

Assessor's Error List Slip

Name: Surplus Trading Company, Max Kalter, Agt.
Address: New York City, N. Y.
S. D. ——.
R. D. ——.

Charge Item

Money in hands of Camp Pike Honorary Commission due Surplus Trading Co., Penalty for failure to assess accordingly.

W. T. Dorough, Assessor, by Marie Miller.

O. K. Dan D. Quinn, County Clerk, by —— ——.

File this slip.

Exhibit No. E to testimony of W. T. Dorough. H. F. Bracey, Official Reporter.

[fol. 73] Q. You stated they made no assessment themselves. I suppose you added the penalty in the usual way for their failure to assess?

A. Yes; you will see at the bottom of the charge Item "Penalty for failure to assess."

Cross-examination.

Mr. Cherry:

Q. Mr. Dorough, this morning you testified, as I recall, on June 3, 1922, you made an assessment against the Surplus Trading Company of $100,000?

A. Yes, sir.

Q. Will you state whether you handled that entire assessment?

A. I handled that; yes. This is the original and I made that myself (Referring to Exhibit "B").

Q. Did any of the deputies have anything to do with it? I am asking that so that It will not be necessary to——

A. No, I made that myself.

Q. How did you get the information on which to make that assessment?

A. Through visiting the auctions at Camp Pike and estimating the amount of purchases, and I asked for the amount from Mr. Mitchell and also Ike Bennett.

Q. When was it that you investigated these various items that you speak of?

A. I will have to give you a little of the history, I guess, to show the whole transaction. I went to Camp Pike—during the time or about the time of the auction sales, my [fol. 74] wife was quite ill and was confined in the hospital on two different occasions, and, to be frank with you, I forgot the matter until along about the latter part of May, and in going through my memorandums I came across this, and then I went into the matter with Mr. Mitchell, who was on the Honorary Board, and I verified his statements through Mr. Ike Bennett.

Q. Who?

A. Mr. Ike Bennett. Then I went to the Terminal Warehouse, and they informed me that there was a stock there owned by these people, but would not give me anything accurate as to the amount they held.

Q. Did you ask them for the amount?

A. Yes, sir.

Q. Who did you ask?

A. As I recall, Mr. Beauchamp. He told me he had no authority to give information about them or any other persons who had property stored there.

Q. Did you assess any property in the Terminal Warehouse?

A. We assessed all property we could find the ownership of; yes.

Q. Did you assess the property of the Honorary Commission in Camp Pike?

A. No, we did not, because that was a State proposition. We felt it was more or less a philanthropic enterprise and it would not be fair to tax it inasmuch as no individual was receiving any profits from it.

Q. Did Mr. Bennett or Mr. Mitchell come to you and call this matter up, or did you go to them?

[fol. 75] A. I saw Mr. Bennett at the sale. I didn't stay there but a short time, and I asked him about the holdings there, and he went into it pretty thoroughly, and he gave us a fairly good assessment on all the stuff he had purchased, and one or two others—probably Siegel-King bought some stuff and made some assessment. In fact, every individual or every firm we found had bought any goods up there made an assessment except this firm.

Q. Siegel-King and Bennett were assessed for the property they bought?

A. Yes, sir.

Q. Did Mr. Bennett have any figures in regard to the Surplus Trading Company?

A. I believe Mr. Bennett gave me information as to the numbers of large commodities bought—that is, blankets, breeches and shirts. I had it on a memorandum but I lost the memorandum.

Q. Was your assessment based on the property that Surplus Trading Company bought at Camp Pike?

A. Yes, sir.

Q. That was the basis of your assessment?

A. It was based on their holdings there; yes, sir.

Q. Did Mr. Mitchell give any figures to you in regard to the Surplus Trading Company's property or the Honorary Commission's property, at the time he conferred with you?

A. Of course, I didn't know the relative holdings between [fol. 76] the two companies. I asked Mr. Mitchell about

the value. I told him we probably did not assess the value up to fifty per cent and I would like to get such data to work on, and asked him if $100,000 would be excessive, and he said he thought not. The fact is he said that would probably be less than forty per cent, and I told him I was going to put them on at $100,000, that probably some of the stuff they held there would not be a stable commodity. In other words it would not sell on the market at the price new factory-made stuff would sell for direct from the factory.

Q. Did you have any list or definite information to go on in regard to the amount of goods or any specific valuation, or did you just figure as a gross sum that it was probably worth that?

A. Mr. Cherry, when I made this list I had a memorandum as to the number of blankets, shirts, etc., and I put it inside and folded it up; but in filing it the memorandum was misplaced. I had it at the time I made the assessment.

Q. You do not recall the approximate amount of each item of goods?

A. No. You see this has been over two years ago, and I handle about forty thousand transactions a year and I cannot keep up with any one particular item; but I did have this information at the time I made the list up.

Q. You stated you made that assessment on June 3, 1922.

A. It was either June 6th or June 3rd. I believe it would [fol. 77] be June 3rd. This date of June 6th is probably an error I had a habit of putting the date on when I made the list—6/1 or 6/4—and I made this 6/6, and probably it should be June 3rd.

Q. From whom did you get the information that Surplus Trading Company bought shirts, breeches, etc., and various kinds of goods.

A. Well, I got it from Mr. Bennett and also from Mr. Mitchell. There were others, but I recall those two. Mr. Turner, who was on the Equalization Board, told me they had holdings up there and for me to investigate it. He was the cause of my going into it.

Q. Mr. H. S. Turner?

A. Yes; he was on the Equalization Board at that time.

Q. Now you made this assessment at approximately the date you say; then on what date was that amount turned over to the county clerk?

A. It was about the first Monday in September. The records will show that. That is about the date I am required to file the books. That may not be the exact date, but it was around the first of September.

Q. On this original assessment of $100,000 do you recall whether or not there was a penalty assessed at that time, or if the penalty was ever canceled?

A. The penalty would accrue in any case where the property owner did not assess himself.

Q. Did the record that you turned over to the county [fol. 78] clerk contain a specific item of the penalty?

A. It should have; yes. The only way it could have failed to get on the books was through a clerical error.

Q. The reason I ask this is because I recall having personally inquired at your office after the assessment—after tax paying time—and I recall I was told that the penalty item was incorrectly entered on the records of the county clerk and that you did not enter that penalty item on your record. It amounts to $800, I believe.

A. I will answer that by saying that in the general routine of business it should go on, and it is a clerical error if it did not. Just an error of omission.

[fol. 79] Henry Moore, a witness for the plaintiff, being first duly sworn, testified as follows:

(Taken on July 29, 1924, Terminal Warehouse.)

Direct examination.

Mr. Tarlowski:

Q. What is your name?
A. Henry Moore.
A. Where do you live?
A. 514 North Valmer Street.
Q. Little Rock, Arkansas?
A. Yes, sir.

Q. Are you connected with Terminal Warehouse Company?

A. Yes.

Q. What position do you occupy with that company?

A. Superintendent.

Q. As superintendent, what are your chief duties?

A. Just the general supervision of the handling of the merchandise in and out of the warehouse.

Q. Do you recall hauling from Camp Pike of a lot of approximately 85,000 blankets some time during the year 1922?

A. Yes, sir.

Q. I wish you would just explain in detail as to the handling of that transaction.

A. I know we hauled them with our own equipment which consisted of one ton-and-a-half trucks and three semi-trailers. We handled them in eight and a half days actual haul-
[fol. 80] ing time, and we worked on them without stopping except on Sunday.

Q. Were you in charge of the loading operation at Camp Pike?

A. Yes, sir; I supervised the loading, out there, and the handling into the warehouse.

Q. You say it took eight and a half days to haul the blankets from Camp Pike to the Terminal Warehouse?

A. Yes, sir.

Q. What fact or circumstance is it that fixes in your mind the time it took to haul them?

A. This equipment—the one ton-and-a-half truck and the three semi-trailers—was something new and we were rather proud of the fact that we could handle the tonnage, consisting of a little better than 4,000 pounds and put it into the warehouse in that space of time. It was something for us to brag about.

Q. If the stock ledger sheet of the Terminal Warehouse Company which covers these items of blankets is dated May 6, 1922, would that mean that the first load of blankets was received here eight and a half days prior to that time?

A. If these blankets were entered up in a lot, it would. I do not know how they were entered up,—whether as they came in or all at one time.

Q. Assuming that they were entered at one time?

A. They would be entered at the completion of the eight and a half days.

Q. If the ledger sheet is dated May 6, 1922, counting back eight and a half days, what would be the first day of the arrival of the blankets?

[fol. 81] A. It would be the ninth day behind the 6th of May; sometime the latter part of April.

Q. It would be approximately the 28th or 29th of April?

A. Yes, sir; I know we handled them through one week and laid off on Sunday and into the next week.

Q. Do you know whether any of those blankets were sold or checked out by the Terminal Warehouse to any parties living in Little Rock or other points in the State of Arkansas?

A. After they were in we shipped them out in small lots, and in carloads, and some were delivered in town here. I remember shipping one lot to Honolulu.

Q. Did you ship any here in town?

A. We shipped several small lots here in town.

Cross-examination:

Mr. Cherry:

Q. Mr. Moore, do you recall whether any of the original cases or bales in which these blankets were packed were broken, or were they shipped out of this warehouse in the original cases and packages?

A. They were shipped out in the original packages, except a few cases which became unpacked and had to be re-baled, and we put burlap around them and shipped them out.

Q. Comparatively a few?

A. Comparatively few were broken up.

Q. What bales and cases were those?

A. They were the original Government bales. They were [fol. 82] not cases; they were the original Government bales as they were packed.

Redirect examination.

Mr. Tarlowski:

Q. Do you recall how long they were in storage before the first were shipped?

A. No, sir.

Q. Do you remember approximately how long?

A. About thirty days probably. That is just my recollection. I do not want to state that as a positive fact.

Witness excused.

Signature waived.

[fol. 83] STIPULATION IN LIEU OF TESTIMONY OF ELI BENNETT, WITNESS FOR THE PLAINTIFF

"It is agreed between counsel for both parties hereto that the testimony in this cause shows that the Surplus Trading Company sold and delivered to Bennett Army Sales Company, merchants, of Little Rock, Pulaski County, Arkansas, on June 22, 1922, ninety-two (92) cases of the blankets in question. The blankets were stored in the Terminal Warehouse in the City of Little Rock, County of Pulaski, State of Arkansas, on June 22, 1922, when the sale and delivery of same was made to Bennett Army Sales Company."

W. O. KOEN, a witness for the plaintiff, being first duly sworn, testified as follows:

Direct examination.

Mr. Tarloswki:

Q. What is your name?

A. W. O. Koen.

Q. Where do you live?

A. Little Rock, Arkansas.

Q. What business are you engaged in, Mr. Koen?

[fol. 84] A. Buyer for the furnishing goods department of Beal-Burrow Dry Goods Company.

Q. I will ask you if, as such buyer, you bought any goods from Surplus Trading Company?

A. Yes, sir.

Q. Do you recall what goods you bought?

A. We bought a bale of army blankets, with the U. S. stamp on them,—20 of those blankets.

Q. Do you recall the price?

A. The price was $2.75.

Q. I hand you herewith what purports to be the original invoice of Surplus Trading Company showing a sale of 20 blankets to Beal-Burrow Dry Goods Company. Is that the invoice for the purchase about which you just testified?

A. Yes; that is my final O. K. checking it in.

Q. Who sold you those blankets?

A. Some little fellow; I don't know his name.

Q. Who was he representing?

A. Surpuls Trading Company.

Q. Where were those blankets at the time you bought them?

A. In the Terminal Warehouse.

Q. In the city of Little Rock, Arkansas?

A. Yes.

Q. Were they delivered from Terminal Warehouse to Beal-Burrow's place of business?

A. We sent our truck to the Terminal Warehouse for them.

[fol. 85] Can you explain this notation: 'Will call', on the invoice?

A. We were to send our truck down there for them.

Q. Now, these initials after the words 'Final O. K.', are those your initials?

A. Yes.

Q. Indicating what?

A. Indicating that the blankets were delivered, brought into the house and put in stock.

Q. Did you buy any other merchandise from Surplus Trading Company, which was in Little Rock?

A. That is the only order I ever gave them.

Q. Will you attach a copy of that invoice to your deposition and mark it as an exhibit thereto?

A. Yes.

Said above mentioned invoice is introduced in evidence and is, in words and figures, as follows, to wit:

Surplus Trading Company, 557 Broadway, New York

May 10, 1922.

Ship, via Will call.

Terms: N/60. Sold to Beal-Burrow D. G. Co., Little Rock, Ark.

Case	Quantity	Description	Price	Total
1 Bale	20	O. D. 4-lb. A blankets	$2.75	$55.00

Suitable for bed, porch, camping, automobile, etc.
Paid Jul. 6, 1922. Beal-Burrow Dry Goods Co., by 6415 F 19. Dept. D. Price O. K. Terms O. K. Freight all [fol. 86] Received Final O. K. W O K.

Cross-examination.

Mr. Cherry:

Q. Do you recall what kind of bales these blankets were packed in? Was it the original army package?

A. I cannot tell you that. I think it was a regular burlap bale. He told me had rafts of them in the Terminal Warehouse; that they had thousands of pairs of them if we wanted them. They had them stored in the Terminal Warehouse, but we only took one bale.

[fol. 86] Redirect examination.

Mr. Tarlowski:

Q. This invoice was paid to Surplus Trading Company, was it?

A. You will have to ask Mr. Joe Simpson downstairs about that.

Q. You do know that it was bought from Surplus Trading Company?

A. Yes, sir.

And was delivered to Beal-Burrow right here in Little Rock?

A. We sent our truck to the Terminal Warehouse to get them.

Q. What is the total amount of this invoice?

A. $55.00, 20 pair at $2.75.

Witness excused.
Signature waived.

[fol. 87] BEN SAGOR, being duly sworn, testified as follows:

Direct examination.

Mr. Cherry:

Q. What is your name?
A. Ben Sagor.
Q. Where do you live?
A. New York City.
Q. What is your occupation?
A. Merchant.
Q. Mr. Sagor, during 1922 were you employed by the Surplus Trading Campany in Little Rock?
A. Yes, sir.
Q. In what capacity did you serve at that time?
A. As manager.
Q. What was the purpose of your presence in Little Rock?
A. To arrange for the sale and disposal of surplus property at Camp Pike, Arkansas.
Q. You were the controlling manager of all of the activities of Surplus Trading Company while you were here?
A. Yes, sir.
Q. Mr. Sagor, state what the Surplus Trading Company is, whether a partnership, association or corporation?
A. The Surplus Trading Company is a co-partnership.
Q. Who are the partners in the Surplus Trading Company?
A. The Surplus Trading Company is composed of S. [fol. 88] Steinfeld & Company, a partnership consisting of Nathan Steinfeld and Ferdinand Seligman; Kalter-Cerf Mercantile Company, a corporation; Joseph Frenkel, an individual; A. Schaap & Sons, consisting of Abraham Schaap, Erwin Schaap, Joseph Schaap and Morris Schaap.
Q. Is Schaap & Sons a corporation?
A. No, a co-partnership.
Q. What is the Kalter-Cerf Mercantile Company?
A. A Corporation.
Q. Is Surplus Trading Company interested in any way or does it hold any stock in the Kalter-Cerf Mercantile Company?

A. Surplus Trading Company is not interested in Kalter-Cerf Mercantile Company, nor does it hold any stock.

Q. In what business is Kalter-Cerf Mercantile Company engaged?

A. Kalter-Cerf Company is engaged in the business of jobbers of general merchandise.

Q. Does the Kalter-Cerf Mercantile Company operate entirely separately from any interest of the Surplus Trading Company in the acquisition of goods and sales of goods?

A. They buy and sell independently of the Surplus Trading Company.

Q. Mr. Sagor, it has been mentioned in the testimony of Mr. Mitchell here about a transaction at Washington at about the time the various lots of goods were turned over to the Honorary Commission, which involved a transaction of a large lot of blankets. Did your company enter into that transaction?

A. Yes; Surplus Trading Company were awarded a lot of blankets located at Camp Pike, direct from the Secretary of War, Weeks.

[fol. 89] Q. It has been testified, I believe, that certain representatives of Surplus Trading Company were in Little Rock about sixty days prior to this award of goods to the Commission. Is that a fact?

A. To my knowledge there has been no representative of Surplus Trading Company in Little Rock sixty days prior to the award being made.

Q. Was there any representative or representatives here before the award of which we are speaking?

A. Yes, sir.

Q. For how long a time?

A. There were two representatives of the Surplus Trading Company here for one or two days about a week before the original date set by the War Department for bids on the surplus supplies at Camp Pike.

Q. What was that date?

A. March 31, 1922.

Q. Did the Surplus Trading Company submit a bid for the goods at Camp Pike under the terms advertised by the Government?

A. It did.

Q. Do you recall the amount of that bid?

A. $338,600.

Q. Was it awarded these goods?

A. The War Department made the award to the Surplus Trading Company as high bidder immediately after the bids were opened.

[fol. 90] Q. Why did not the Surplus Trading Company receive these goods?

A. This award was later changed by the War Department, upon the request of the delegation from Arkansas who were desirous of getting the supplies at Camp Pike for the benefit of the National Guard.

Q. Was the withdrawal of this award contested by the Surplus Trading Company in any way?

A. It was not.

Q. In regard to the transaction in Washington, on or about May 8, 1922, were any specific goods withheld by the War Department from the agreement with this delegation from Arkansas?

A. Between the time of the first opening of bids, March 31, 1922, and May 10, the date set for the second opening of bids for the supplies at Camp Pike, the War Department withdrew an item of blankets and an item of harness and leather goods from the original inventories at Camp Pike?

Q. Why did they withdraw those items?

A. The lot of blankets were sold by the War Department to the Surplus Trading Company of New York. The lot of harness and leather goods were withdrawn at the request of the Department of Justice of the United States pending a suit which they were bringing in Washington against some manufacturers of these leather goods and harness, and it was temporarily withdrawn from sale.

Q. Why hasn't the item of blankets, which you mentioned as being sold to Surplus Trading Company, included in the award to the delegation from Arkansas?

[fol. 91] A. Because it had been previously awarded and sold to Surplus Trading Company.

Q. Did the Surplus Trading Company make any plans for disposing of any of the goods which they contemplated they would get on account of their high bid, before the arrival of the delegation from Arkansas?

A. Yes. Immediately after the award of March 31 was made Surplus Trading Company offered and sold some of the blankets located at Camp Pike, among other items.

Q. What was the plan for selling items other than the blankets after the award was made to the Arkansas delegation?

A. The matter of sale was to be made either by private sales or auction sales as seen fit between the Commission and the Surplus Trading Company.

Q. In regard to the sale of blankets, do you recall the approximate number of blankets which was sold by the Government to the Surplus Trading Company in this transaction in Washington?

A. Yes, sir; approximately 87,000.

Q. Were these goods delivered to the Surplus Trading Company?

A. Yes.

Q. Did you receive a shipping ticket from the properly authorized officer of the War Department to the Surplus Trading Company?

A. Yes, sir.

Q. I show you what purports to be a shipping ticket from the property officer, Camp Pike, Arkansas, dated May 8, 1922. Will you state whether that is the shipping ticket [fol. 92] covering this lot of blankets?

A. It is.

Q. Mr. Sagor, to your knowledge is this the original shipping ticket?

A. No, sir.

Q. Where is the original shipping ticket?

A. The original shipping ticket is on file with the records of the War Department left at Camp Pike.

Q. Is this a carbon copy of the original shipping ticket?

A. Yes, sir.

Q. Mr. Sagor, will you attach this shipping ticket to your deposition as an exhibit thereto?

A. I will.

Said above mentioned shipping ticket is filed in evidence and is, in words and figures, as follows, to wit:

Shipping Ticket

Property Officer. Triplicate. Name of Station: Camp Pike, Arkansas. Warehouse: 3. Date: 5/8/22. Req. No. S. T. 4090. No. of sheets: 1.

Sheet 1

Ship to Surplus Trading Co., New York, N. Y. (Ben Sagor, Mgr.). Authority: Contract dated April 21, 1922. Routing: ——. Truck: ——. Date Shipped or delivered: 5/8/22.

[fol. 93]

Quantity Ordered	Shipped	Unit	Articles
.....	17198A	ea	Blankets, saddle O. D.
.....	694B	ea	Blankets, saddle O. D.
.....	60525A	ea	Blankets, woolen O. D.
.....	8668B	ea	Blankets, woolen O. D.
.....	43B	ea	Blankets, saddle, commercial.
.....	15A	ea	Blankets, commercial.

Shipment complete. ERS.

J. C. Hulsey, Shipping Clerk."

Q. Mr. Sagor, this shipping ticket is dated as I said, May 8, 1922, that being the date of the delivery to the Surplus Trading Company of this property. Is that correct?

A. Yes, sir.

Q. This shipping ticket shows in the quantity column various items which total 87143 and is distributed over saddle blankets, woolen blankets and commercial saddle blankets and commercial blankets, and is marked "Shipment complete E. R. S." I will ask you whether these items are correct and whose initials those are—E. R. S.?

A. To the best of my knowledge those figures are correct, and the initials E. R. S. are those of Lieut. E. R. Stevens, who was then in charge of the surplus property at Camp Pike for the War Department.

Q. Mr. Sagor, did the Honorary Commission, which [fol. 94] traded as Camp Pike Disposals Board, ever have any title to any of these blankets?

A. No, sir.

Q. Was that Board in any way interested in these blankets?

A. No, sir.

Q. Mr. Sagor, while you were in Little Rock handling the disposal of goods in connection with the auction sales

for the Honorary Commission did you keep an account of the movement and disposition of this lot of blankets of which we were speaking?

A. I did.

Q. Do your records show the dates and amounts of shipments to various localities of blankets direct from Camp Pike sold by the New York office?

A. They do.

Q. Do your records show the dates of each load of blankets together with the number of cases in each load, and the total blankets in each load of this merchandise received by the Terminal Warehouse in Little Rock, Arkansas, from Camp Pike?

A. They show the exact number of cases, or bales, whichever the case was.

Q. Do your records show the dates and localities to which shipped and the number of blankets of this lot of merchandise shipped from Terminal Warehouse in Little Rock?

A. Yes, sir; they do.

Q. Do your records show any sales which were negotiated [fol. 95] by you personally as representative of Surplus Trading Company?

A. They do.

Q. Who kept this record, Mr. Sagor?

A. I did.

Q. Are all of the entries in this record in your own handwriting?

A. Yes, sir.

Q. Were they made contemporaneously with the items which they are proposed to note?

A. They are.

Q. Are they correct?

A. Yes.

Q. Will you introduce photostatic copies of the pages 2, 10, 11, 20, 22, *22*, 23, 24, 40, 41, 42, 50, 51, 60 and 61 of your ledger, and mark them as exhibits to your deposition?

A. Yes, sir.

Said above mentioned photostatic copy of ledger sheets are filed in evidence, and are, in words and figures, as follows, to wit:

[fol. 96]

EXHIBITS

		From Camp	4lb A	4-B	5-A	5-B	?
April	22	Surplus T. Co., Exp., 2 Bales, 2/20, 4lb A	40				
	22	Surplus T. Co., Exp., 1 Bale, 1/25			25		
	22	Geo. Menagl, Omaha, Exp., 1 Bale, 1/20	20				
	22	Geo. Menagl, Omaha, Exp., 1 Bale 1/25, Omaha			25		
	25	Joe Lehman, Exp., 1 sample	1				
	25	U. S. Merc. Co., San Antonio, Exp., 1 sample	1				
	27	Famous & Barr, St. Louis, Frt., 20 Bales, 20/25			500		
	27	Famous & Barr, St. Louis, Frt., 10 Bales, 10/50	500				
	28	Altheimers, D. G. Co., Little Rock, 10 Bales, 10/20	200				
	28	Altheimers, D. G. Co., Little Rock, 4 Bales, 4/25			100		
	29	Claflins, Inc., New York, 5 Bales, 5/25			125		
May	3	John Wanamaker, N. Y., 2 Bales, 2/20	40				
	4	Surplus Trading Co., 250 Bales, 250/20	5,000				
	4	Surplus Trading Co., 75 Bales, 75/50		37.50			
	4	M. Seller Co., Spokane, 3 Bales, 3/20		60			
	4	Forbes & Wallace, Spgfd., Mass., 2 Bales, 2/50	100				
	4	Herpolsheimer Co., Grd. Rap., Mich., 1 Bale, 1/25			25		
	4	Herpolsheimer Co. Grd. Rap., Mich., 1 Bale, 1/20	20				
	4	I. S. Barney Co., Sch., N. Y., 2 Bales, 2/50	100				
	4	Korricks D. G. Co., Phoenix, Ariz., 2 Bales, 2/50	100				
	4	John C. Lewis Co., Louisville, Ky., 2 Bales, 2/50	100				
	4	Sage Allen Co., Hart., Conn., 2 Bales, 2/30	40				
	6	Forbes & Wallace, Spfld., Mass., 2 Bales, 2/20	40				
	8	Pittsburgh D. G. Co., Pitts.			5		
	9	Weatherly McKennie Co. Ly., Ky., 10 Bales, 10/50	500				
	9	Shuneman & Evans, St. Paul, Minn., 1 Bale, 1/25	25				
	9	Surplus T. Co., samples	6	6	6	6	

[fols. 97 & 98] Saddle Blankets A

Terminal Warehouse Co., 812 E. 2nd St., Little Rock, Ark.

April	27	Load	#	1—	44	Bales—	44/25	1,100
"	28	"		2—	44	" —	44/25	1,100
"	28	"		3—	44	" —	44/25	1,100
"	28	"		4—	44	" —	44/25	1,100
"	29	"		5—	44	" —	44/25	1,100
"	29	"		6—	44	" —	44/25	1,100
"	29	"		7—	44	" —	44/25	1,100
"	29	"		8—	44	" —	44/25	1,100
"	29	"		9—	44	" —	44/25	1,100
"	29	"		10—	15	" —	15/25	375
"	29	"		11—	15	" —	15/25	375
May	1	"		12—	44	" —	44/25	1,100
"	1	"		13—	44	" —	44/25	1,100
"	1	"		14—	20	" —	20/25	500
					31	" —	31/25	775
"	1			15—	61	" —	61/25	1,525
"	1			16—	29	" —	29/25	725
"	8			51—	1	Case —	1/17	17

[fols. 99-103] O. D. Blankets—4 lb. Class A

Terminal Warehouse Co., 812 E. 2nd St., Little Rock, Ark.

May	1	Load	#16—	43	Bales—	43/20	860	
"	1	"	17—100	"	—	100/20	2,000	
"	1	"	18—100	"	—	100/20	2,000	
"	2	"	19— 76	"	—	76/20	1,520	
"	2	"	20— 76	"	—	76/20	1,520	
"	2	"	21— 80	"	—	80/20	1,600	
"	2	"	22— 80	"	—	80/20	1,600	
"	2	"	23—100	"	—	100/20	2,000	
"	2	"	24—100	"	—	100/20	2,000	
"	3	"	25—100	"	—	100/20	2,000	
"	3	"	26—100	"	—	100/20	2,000	
"	3	"	27—100	"	—	100/20	2,000	
"	3	"	28— 85	"	—	85/20	1,700	
"	3	"	29— 80	"	—	80/20	1,600	
"	3	"	30— 80	"	—	80/20	1,600	
"	4	"	31— 80	"	—	80/20	1,600	

May	4	Load	32— 80	"	—	80/20	1,600
"	4	"	33— 80	"	—	80/20	1,600
"	4	"	34— 80	"	—	80/20	1,600
"	4	"	35— 80	"	—	80/20	1,600
"	4	"	36— 52	"	—	52/20	1,040
"	4	"	— 15	"	—	15/50	750
"	5	"	37— 35	"	—	35/50	1,750
"	5	"	38— 35	"	—	35/50	1,750
"	5	"	39— 35	"	—	35/50	1,750
"	5	"	40— 36	"	—	36/50	1,800
"	5	"	41— 37	"	—	37/50	1,850
"	5	"	42— 37	"	—	37/50	1,850
"	5	"	43— 35	"	—	35/50	1,750
"	6	"	44— 34	"	—	34/50	1,700
"	6	"	45— 37	"	—	37/50	1,850
"	6	"	46— 37	"	—	37/50	1,850

[fol. 104-106] O. D. Blankets—4 bl. Class B

Terminal Warehouse Co., 812 E. 2nd St., Little Rock, Ark.

May	8	Load	47-26	Bales	26/50	1,300
"	"	"	48-26	"	26/50	1,300
"	"	"	49-24	"	24/50	1,200
"	"	"	51-21	"	21/50	1,050
			97			4,850

[fols. 107 & 108] O. D. Saddle—Blankets Class B

Terminal Warehouse Co., 812 E. 2nd St., Little Rock, Ark.

May	8	load	50-20	Bales 20/25	500
"	"	"	51-1	Bales	35
"	"	"	50-6	cases 2/25-1/26-1/46-1/19-1/13	154
					689

[fols. 109 & 110] O. D. & Commercial etc.

Terminal Warehouse Co., 812 E. 2nd St., Little Rock, Ark.

May	8	Yoad	51-3/25	comm. saddle Class B	75
"	"	"	51-3/25-1/33	O. D. Class C	108

[fol. 111] Q. These sheets are a complete record as you personally kept them as to the blankets, showing all shipments of blankets to the Terminal Warehouse, and shipped out of the Terminal Warehouse and shipped direct from Camp Pike?

A. Yes, sir.

Q. Mr. Sagor, I will ask you the meaning of the notation, which appears on various pages, of the initials 'B. S.' in a circle?

A. The initials 'B. S.' in a circle designates all blankets which I personally sold.

Q. As representative of the Surplus Trading Company?

A. Yes.

Q. Who sold all of the rest?

A. All the rest of the blankets were sold through the New York office.

Q. Mr. Sagor, you have stated that some of these shipments,—in fact, all of those which appear in your records and which are not identified by your initial—were sold from the New York office?

A. Yes.

Q. Where were the original bills sent out for these shipments?

A. The original bills on all of the blankets that were sold by the New York office were sent out from the New York office.

Q. What position did you occupy in Little Rock in regard to these different shipments that left Camp Pike, or left the Terminal Warehouse? Did you receive your instructions from the New York office?

[fol. 112] A. I received all my instructions from the New York office.

Q. Were the entire transactions of these shipments about which we are speaking carried on and consummated in New York?

A. With the exception of the few I personally sold, all of the transactions relative to the blankets were made in New York.

Q. Do you recall whether Surplus Trading Company had any orders for these blankets at the time, thinking they would receive the full award of Camp Pike?

A. Surplus Trading Company——

Q. Yes, on or before May 8, after the submission of their top bid?

A. The Surplus Trading Company offered and sold some blankets immediately after they were awarded the supplies at Camp Pike on the first call for bids, the date being March 31. We immediately took orders for some after that.

Q. Do you know of any records that could be found to show that situation existed, either your own or Surplus Trading Company's records?

A. The records of Surplus Trading Company would show that.

Q. Mr. Sagor, did Surplus Trading Company have any office or store or room in the City of Little Rock, or anywhere in the State of Arkansas?

A. No, sir.

Q. Did it carry on any regular retail or wholesale business in this state as a merchant?

A. No, sir.

* * * * * * *

[fol. 113] Q. Mr. Sagor, will you please state what your records shows as the total number of blankets shipped from Camp Pike to points in Arkansas, and sold by yourself as representative of the Surplus Trading Company?

A. I sold and ordered shipped 3,422 blankets in Arkansas, 300 of which were shipped direct from Camp Pike, and the balance were shipped from the Terminal Warehouse.

Q. Mr. Sagor, will you state what your records show as the number of blankets shipped direct from the Camp Pike outside of the State, and also the number of blankets sent from the Camp to the Terminal Warehouse, and also the number of blankets sent from the Terminal Warehouse to points in Arkanses, and the total number of blankets sent from Terminal Warehouse to points outside of the State of Arkansas?

A. The total number of blankets shipped direct from the Camp outside of this state which was sold by the New York office was 11,166; the total number of blankets consigned to the Terminal Warehouse was 75,696; the total number of blankets sent from Terminal Warehouse to points in Arkansas was 3122; the total number of blankets

sent from Terminal Warehouse to points outside of the state was 72,574.

* * * * * * *

Q. After these blankets reached the Terminal Warehouse the records shows that you shipped various lots to various destination out of the state. Why did you make those shipments?

A. On or about April 27, 1922, I shipped to Terminal [fol. 114] Warehouse the balance of the blankets of the Surplus Trading Company, from Camp Pike, and beginning with May 4, 1922 I received orders from the New York office for these blankets, and I made shipments of these blankets all over the country, beginning with May 4, 1922. The majority of these blankets were shipped out of the Terminal Warehouse within the next sixty days following May 4.

* * * * * * *

Q. Mr. Sagor, what was the exact amount paid by the Surplus Trading Company to the United States Government for the entire lot of blankets which you have testified about?

A. Surplus Trading Company paid the United States Government $138,492.65 for the lot of blankets located at Camp Pike.

Q. How many blankets were there?

A. 87,143.

* * * * * * *

Q. Was there any person or firm of this state which had these goods as owner, or in its possession?

A. No, sir.

Q. For the purpose of selling for profit?

A. No, sir; there was no one in this state that actually owned them. I merely supervised the shipping of these upon instructions or directions from the New York office of the Surplus Trading Company.

Q. Your authority to deal with them in whatever way you [fol. 115] did deal with them came from the New York office of the Surplus Trading Company?

A. Absolutely; yes.

Q. Was any of these goods consigned to you, or any other individual or firm of this state, whether corporation

or partnership, from any place outside of this state, to be sold here?

A. No, sir.

Cross-examination.

Mr. Marshall:

Q. You had power to sell the blankets yourself, did you not, by reason of your authority from the owners?

A. I had power to sell blankets in small quantities, but the orders were approved by the New York office.

Q. You did sell considerable quantity of the blankets yourself, did you not?

A. No, sir; not any considerable amount.

Q. You sold quantities without approval of the New York office at all, did you not?

A. No, sir.

Q. Do you mean to say when you had an offer you had to forward it to get an O. K. on it before you could make the sale?

A. If the quantity amounted to anything; yes.

Q. You say the Surplus Trading Company gave one hundred thirty-eight thousand-odd dollars for that bunch of blankets?

A. Yes.

[fol. 116] Q. Now was that awarded to them as a proportionate part of their bid of $338,000, or how was that arrived at?

A. The price of the blankets was arranged by the Director of Sales, the Secretary of War, and Mr. Kalter for the Surplus Trading Company in Washington.

Q. These blankets were bought at a considerable discount from the Government, were they not? Weren't all of those surplus supplies bought at a considerable discount?

A. Considerable discount based on what figures?

Q. On the actual value, or based on what the Government paid for them?

A. Considerable discount from what the Government paid for them; yes.

Q. What percentage above the cost of these blankets would you say they were sold for?

A. About ten per cent.

Mr. Cherry: I object to that.

Q. No more than that?

A. No, sir.

Q. You mean to say that you did not sell these blankets for more than ten per cent more than $138,000? That would be $151,000, approximately. Is that all you sold them for?

A. An average of about that.

Mr. Cherry: I object to that on the ground that it is irrelevant.

Q. Now you stated the Surplus Trading Company got the slickers and raincoats from Mr. Bennett who bought them [fol. 117] at one of the Camp Pike sales?

A. Yes.

Q. About what time was it they brought those from Mr. Bennett?

A. Few days following the auction sale.

Q. Which auction sale?

A. I can tell you by referring to the records. I think it was the auction sale of October 10.

Q. A few days after that you bought them?

A. Yes, sir.

Q. What did you do with them after that?

A. Had them stored in Terminal Warehouse.

Q. They were afterwards sold as one of the items you show on your books here?

A. Yes, sir.

Q. How did you say Surplus Trading Company obtained ownership of the horse covers?

A. They were simply purchased from the buyer who bought them at the auction sale.

Q. Do you remember who that buyer was?

A. I do not.

Q. Do you remember what the amount of that sale was?

A. In money?

Q. Yes, sir.

A. No.

Q. Approximately?

A. No, I don't remember.

[fol. 118] Q. Is there any record here to show what the amount of that sale was?

A. The books of the Camp Pike Disposals Board would show it.

Q. Do you remember the quantity?

A. No, if I remember the quantity I could give the approximate value.

Q. What was the value of those covers, each?

A. About $1.10.

* * * * * * *

Q. Let me ask you this question now: According to the exhibits, photostatic copies of which you have attached to the testimony taken in Arkansas, you began a shipment from Camp Pike of some of these blankets on the 22nd day of April; is that right—page 2?

A. On April 22, 1922.

Q. Now was that after the Surplus Trading Company had closed the deal for the purchase of these blankets from the War Department?

A. Yes, sir.

Q. From that time on until October of 1922 you continued to make shipments and deliveries of those blankets, did you not?

A. Yes.

[fol. 119] Q. Did you know on the 22nd day of April to whom you were going to ship these blankets?

A. No.

Q. You only shipped them as they were sold to these various purchasers? Is that right?

A. No, I shipped them only——

Q. (Interrupting) When you received an order for it?

A. When I received an order for it.

Q. Those orders were not shipped until a sale was made either by the Surplus Trading Company or by somebody of its brokers?

A. That is right.

Q. These shipping tickets which were introduced in evidence from the Terminal Warehouse Company show that many of the shipments went into various states in the Union?

A. Yes, sir.

Q. Then a shipment would not be made until a sale is made?

A. Yes, sir.

Q. You have noted there a few sales before May 8th.

A. I made several shipments before May 8th.

Q. Some from Camp Pike and also from the Terminal Warehouse before May 8th, didn't you?

A. I made several from Camp Pike before May 8th, and also a few from the Terminal Warehouse Company before May 8th.

Q. In the sale of these blankets, Mr. Sagor, the Surplus Trading Company intended to sell them to anybody that wanted to buy them if they paid the price for it?

[fol. 120] A. Yes.

Q. In other words, in selling them through other brokers, —through other concerns—no restriction was placed upon who might buy them from the Surplus Trading Company?

A. No, sir.

Q. And if sales had been made by these various factors or brokers within or without the State of Arkansas, and the price was paid, you would have shipped them, wouldn't you? The Surplus Trading Company would have shipped them?

A. Yes, I suppose they would.

Q. So when the large number of blankets that were stored in the Terminal Warehouse at Little Rock left Camp Pike, beginning April 22nd up to and including May 8th, did you know at that time to whom the blankets were to be consigned in the future?

A. Not in the future. I only knew as I received orders for them.

* * * * * * *

[fol. 121] MAX KALTER, a witness for the defendants, being first duly sworn, testified as follows:

Q. Mr. Kalter, this suit, comprising as it does an illegal tax on personal property, will you state of what your personal property consisted in the State of Arkansas, i. e., territorially, in 1922? That is, state the type of personal property that you bought there the first time in such year?

A. We bought in April of 1922, from the United States Government, through the Secretary of War, John W. Weeks, approximately 80,000 Government blankets.

Q. There has been introduced in evidence a delivery sheet and I ask you to identify this delivery sheet which has been introduced in evidence in the deposition of Ben

Sagor. I will ask you whether or not this shipping ticket identifies the purchase to which you have referred.

A. It does.

Q. Mr. Kalter, you state you purchased that direct from the Secretary of War?

A. Direct from the Secretary of War.

Q. Where was that transaction carried out?

A. In the Secretary of War's office in Washington—Navy, State and Army Building.

Q. Was this purchase of goods by bid, or by private negotiations?

A. This purchase was by private negotiations.

Q. Did it have any connection with a bid for certain surplus army supplies at Camp Pike?

[fol. 122] A. It did.

Q. About what time—that is, in general—did you first enter into the transaction in regard to these surplus supplies at Camp Pike?

A. The Government had valled for bids for the purchase of all surplus supplies at Camp Pike. These bids were to be opened on the 30th day of March, 1922. I was in Camp Pike some five or six days prior to the date advertised for the opening of the bids, together with some men whom we sent down from New York and who preceded me to Camp Pike from New York for the purpose of inspecting these goods and gathering sufficient information to enable us to bid on these goods. I telephoned through to my associates in New York and gave them a report of my conclusions, and as a result of this report my firm bid approximately $338,000 for the surplus material at Camp Pike.

Q. Mr. Kalter, I would like to interrupt you just a moment. Did this bid of $338,000 include the blankets in question?

A. Yes. This bid included all property among which was included the blankets which we afterwards bought and which are the subject of this shipping ticket. We were informed by the Director of Sales' office that our bid was the highest and that under the terms of the bid the Government had awarded us this material, and that the contract was then in course of preparation and would be ready for signature in a few days.

Q. Was this bid consummated by the signed contract which you have mentioned?

[fol. 123] A. By a signed contract?

Q. Yes.

A. We believed that the bid was consummated by the Government writing us this letter. We had on deposit with the Government $100,000, as we felt that we would complete the terms of the bid. A few days after receiving this letter I had a wire from one of the men I had sent to Little Rock with a view to handling the goods bought under this bid, who wired in that there had been an agitation in Little Rock with the purpose of having the Government cancel the award made to us, and to have the goods sold to the State of Arkansas. After receiving this wire from Little Rock I telephoned the Director of Sales' office in Washington and asked them when the contract would be ready for signature. I was informed in the course of a day or two it would be ready and they would wire me when to come down to sign this contract and make the necessary payment. To my surprise, the next morning I received a wire stating that the Secretary of War had ordered a suspension of the drawing of this contract, pending further instructions. I immediately went to Washington and interviewed various officials and also the Secretary of War, personally, and was informed by the Secretary of War that his reasons for ordering the suspension of our contract was that the State of Arkansas required these goods for National Guard purposes and that his obligations to the State overruled any question of private contract, and that he would call for new [fol. 124] bids so as to give the State of Arkansas an opportunity of bidding for the material and, as he expressed it, to give them their day in court.

I pointed out to him that these goods had been advertised for a period of two months; that if the State had been interested that they had ample time to make their bid, and that the whole thing was unfair and inequitable, and that as the Government had accepted the bid in good faith we had acted on the assumption that the Government's acceptance was final, and had already commenced negotiations to sell part of these goods; that it had been broadcast through the papers by the War Department's Publicity Department that the Government had sold us these goods; that it would create a bad effect on the commercial world as regards ourselves; there would be much speculation as to why this had been withdrawn, and also that I thought that the United

States Government should not consider a contract as a scrap of paper to tear up at will.

Q. Mr. Kalter, what was the final outcome?

A. The Secretary informed me that he thought I was quite right; that as an individual he would not dream of being guilty of such bad faith as the Government was showing, but that it was a question of public policy and he felt he owed it to the National Guard to give them an opportunity of buying these goods. However, he agreed that the blankets which I stressed—that we had commenced negotiations, and had commenced a plan for the merchandising of them—[fol. 125] in fact, were practically committed with a view to distributing these. He agreed to sell me the entire 80,000 blankets which were there for the price of approximately $138,000. I paid for these goods and had the War Department wire Camp Pike to give our representative immediate delivery.

Q. Mr. Kalter, about what date was that? I ask you this question because the shipping ticket relates, I believe, that the contract is dated April 22, 1922.

A. These negotiations were continued from about the 10th of April until the 21st of April. I immediately wired our representative at Camp Pike to have these goods removed from Camp Pike and put into the Terminal Warehouse for the purpose of re-shipping them from there. My reasons for having them taken to the Terminal Warehouse were, firstly that the goods could not be shipped from Camp Pike in less than carload lots; secondly, we thought the insurance rate at Camp Pike was prohibitive, and, thirdly, and perhaps the most important reason of all was that having once suffered through the Arkansas influence in Washington and having had one contract suspended, I was afraid that when the people in Arkansas found out that blankets which were undoubtedly the choicest portion of the materials in this Camp had been sold, they would perhaps take steps to block me, and I felt that if they were out of the Government warehouse, they would not be able to *so* any such thing.

[fol. 126] Q. Mr. Kalter, on the shipping ticket to which you have referred there appears the notation in the space for the date "Shipped or delivered 5/8/22." What is the significance of that notation?

A. That is the date that the shipment was completed.

Q. You mean that is the date on which the blankets were removed from Camp Pike?

A. The date the blankets were removed from Cam- Pike.

Q. In the meanwhile were any direct shipments made from Camp Pike by railroad?

A. Part of my agreement with Mr. Weeks was that he would leave our bid stand at its original figure less the purchase price of the blankets, and leave the deposit of $100,000 with the Government, so that in the event of bids being lower than our original bid the Government could again accept our original bid. I then went to Little Rock and conferred with the gentlemen who now constituted the Honorary Commission, with a view to co-operating with them in the handling of this Camp, if they were successful in purchasing same, and with the understanding that if we made an agreement I would withdraw all opposition to their being awarded this Camp. I, at the same time, instructed my representatives in Little Rock with reference to handling of these blankets and maintaining certain shipments to customers direct, which was done, some few blankets being shipped to various parts of the country between the 27th and 29th of April, and the balance of the blankets being [fol. 127] transferred to the Terminal Warehouse, who received them and completed taking the transfer, according to their records, on the 8th of May, 1923.

* * * * * * *

Q. There have been certain sales referred to in earlier testimony to certain individual firms in the State of Arkansas. Will you state whether there was any exception in regard to the handling of those sales from any other sales?

A. Not that I know of. Of course Mr. Sagor was in Arkansas representing the Surplus Trading Company in the conduct of their Camp Pike matter.

Q. That was the purpose of his presence in Arkansas?

A. That was the purpose of his presence in Arkansas. Naturally if any of our customers in Arkansas required any of the goods that we knew we had, they would very likely interview Sagor there, and in fact Sagor being a zealous employee would very likely drum trade wherever he happened to be.

* * * * * * *

Q. In other words, Mr. Kalter, the only goods which were owned outright in general in the months of May and June, 1922, by the Surplus Trading Company, were these blankets purchased from the Government?

A. Those are the only goods.

Q. And I believe the evidence shows that there were cer-
[fol. 128] tain small transactions which were more in the nature of adjustments later on where the small amounts were taken back?

A. There were some cases where we sold some goods to a man in Pine Bluff and instead of paying the freight all the way back to New York, we had them sold on the spot. There were one or two instances of that kind.

Q. Now those instances are simply little examples of your usual course of business throughout the country?

A. We did that generally throughout the country. If we have a rejection in any part of the country—say close to Chicago—we would have these goods re-sold from Chicago, or if the goods were in Missouri, we would have them re-sold in that section, so as to avoid the transportation charges to and fro.

Q. Mr. Kalter, about the expense of storing certain goods in the Terminal Warehouse; were the blankets in general the only items of the various Government supplies at Camp Pike for which the Surplus Trading Company paid the storage charges?

A. With the exception of a few items that I have mentioned as afterwards matters of adjustment. The blankets were the only things on which the Surplus Trading Company paid the storage charges.

* * * * * * *

Q. The records introduced as exhibits to Mr. Sagor's testimony showing that these blankets started from Camp Pike about April 22, 1922?

[fol. 129] A. Yes.

Q. And that all of the blankets had either been shipped from Camp Pike to the various points or the Terminal Warehouse by May 8, 1922?

A. Yes.

* * * * * * *

[fol. 130] IN CHANCERY COURT OF PULASKI COUNTY

[Title omitted]

Agreed Statement of Facts—Filed June 4, 1925

The Plaintiff, Homer M. Adkins, as Sheriff and ex-officio Collector of Taxes for Pulaski County, Arkansas, and the defendant, Surplus Trading Company, being parties to the above entitled cause, agree that the following is a statement of facts upon which a decree shall be rendered therein, the controversy therein being submitted to the court, as far as the facts herein related are concerned, upon said agreed statement of facts:

1. That land in Pulaski County, State of Arkansas, to which reference is made at various times in depositions taken in this cause as "Camp Pike," is a certain tract of land lying in said county and state, purchased by the United States at some time prior to the year 1922 for use as a Federal reservation, or United States Army Cantonment.

2. The purpose of the purchase of Camp Pike by the United States was the location of a military encampment and mobilization point for the United States Army after the entrance of the United States as a participant in the [fol. 131] late war with Germany.

3. There was erected, prior to the year 1922, various buildings in Camp Pike deemed necessary for its use as a Federal reservation, or army cantonment.

4. All of the warehouses and other buildings referred to in depositions taken in this case as being situated in Camp Pike were or are situated on the lands hereinbefore mentioned.

5. Those buildings referred to in depositions heretofore taken in this cause as being certain buildings at Camp Pike in which auction sales were held are included among those buildings situated on the lands hereinabove designated.

6. Those warehouses or buildings referred to in depositions heretofore taken in this cause as having contained various articles of surplus army supplies, and generally referred to as being located at Camp Pike, were or are situated on the lands above designated.

7. The United States Government was the purchaser of the fee simple title to the lands included in Camp Pike and no change has occurred in such title or occupancy by the United States from its acquisition to January 1, 1924, save as it may have been qualified by the certain writings, true copies of which are hereto attached and identified as follows:

[fol. 132] Certificates of Thomas C. Mc Rae, Governor, setting forth the personnel of an Honorary Commission, as Exhibit A;

First Revocable License from J. N. Wainwright, Assistant Secretary of War, to the State of Arkansas, Exhibit B;

Receipt for the State of Arkansas by Thomas C. McRae, Governor, to Edwin C. Gere, Q. M. C., representing the War Department for properties at Camp Pike, Exhibit C;

Second Revocable License from J. N. Wainwright, Assistant Secretary of War, to the State of Arkansas, dated November 30, 1922, Exhibit D;

Letter from A. C. Dalton, Acting Quartermaster General to the Adjutant General of the State of Arkansas, dated August 10, 1922, Exhibit E;

Photostat copy of letter from Robert Collins, Adjutant, to the Quartermaster General, dated July 31, 1922, Exhibit F.

Witness our hands by our attorneys of record this — day of ——, 1925.

Homer M. Adkins, as Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas, Plaintiff, by Sam T. & Tom Poe, J. C. Marshall, Attorneys. Surplus Trading Company, Defendant, by Rose, Hemingway, Cantrell & Loughborough, Attorneys.

[Title endorsement omitted.]

[fol. 133] EXHIBIT A.

State of Arkansas, Governor's Office, Little Rock.

This is to certify that General Lloyd England, Albert D. Cohn, W. S. Mitchell, Col. John R. Fordyce, Col. C. B.

Moore, Maj. H. F. Fredeman, Dr. G. L. Sands, Gen. J. A. Shipton, W. B. Smith, Moorhead Wright, H. L. Remmel, and W. F. Bridewell, are hereby appointed an Honorary Commission to represent the public interest in the sale and disposal of all surplus property at Camp Pike, for the benefit of the National Guard of Arkansas, acquired from the United States. The proceeds arising from the sale of said surplus property shall be used:

First: For the payment of the purchase price of said property and the expense of sale:

Second: In the preservation and beautification of Camp Pike, and in the general improvement thereof, all for the public good. Any of said material and supplies not sold shall be held for the use and benefit of the National Guard of Arkansas.

Inasmuch as the State has no relation to the work of this Commission, I hereby grant the right of self-government and self-perpetuation to the Commission in the proper carrying out of the purposes of its creation; and it is especially authorized to determine the depository and custody [fol. 134] and direct the disbursements of the profits arising from the sale of said materials and supplies.

In witness whereof I have hereunto set my hand in the Executive Chamber, City of Little Rock, on this the 22nd day of May, 1922.

(Signed) Thomas C. McRae, Now Governor of Arkansas.

EXHIBIT B

Revocable License

The State of Arkansas is hereby granted a license revocable at will by the Secretary of War, to occupy and use in connection with the organization and training of its National Guard real estate, buildings, and utilities at Camp Pike, Arkansas, as follows:

1. Real estate.

All real estate including that comprising the target range.

2. Buildings.

(2) All buildings within the large irregular area included between the red lines and designated as "C" on

attached map "A." This area extends from slightly west of 5th Street to slightly west of 20th Street, North, to in-
[fol. 135] clude Quartermaster and Ordinance storehouses and North to include all buildings in this area.

(b) Outside of the area outlined in (a) above, all buildings on May "A" included within red lines.

(c) All buildings on the target range.

(3.) Utilities.

Roads and walks as they now stand.

Gasoline Storage Tank.

10,000 gallon gasoline storage tank with filling station.

Railroad tracks.

All railroad tracks except that portion northeast of point "B" indicated in blue pencil on the attached map "A."

Lighting system.

Sufficient facilities leading from the Camp transformer station to apply the buildings turned over to the State.

Water system.

To be turned over intact.

Heating plants.

To be turned over intact for officers' quarters within the area outlined in yellow on the attached map "A" and in building N. 2355. For the balance of the buildings turned over to the State, including the base hospital, the boilers to be salvaged or sold, but radiation in the buildings to remain intact. Hot water heaters in bath houses in areas and build-
[fol. 136] ings turned over to the State will be left intact.

This license is granted upon the following provisions and conditions:

1. That any and all repairs to buildings on the said reservation occupied or used by the State of Arkansas under this license shall be made by the State without expense to the United States.

2. That the War Department retains the right to occupy any building which the State is authorized to occupy and use under this license, so long as the War Department may require them in connection with the salvaging of the Camp and the storage or disposition of Government property.

3. That such part of any water, sewage, lighting system or other utilities as the State of Arkansas is authorized to use by this license shall be kept by the State in thorough repair at all times and shall upon the relinquishment or revocation of this license be returned to the United States

in as good condition as when received, fair wear and tear and damage by the elements excepted.

4. That the State of Arkansas shall make such use or uses of the real estate turned over to the State as it shall see fit, provided that such use or uses do not interfere with its use for military purposes, for which it is being licensed to the State; but no permanent construction work shall be placed thereon without the authority of the War Department.

[fol. 137] 5. That the State of Arkansas is charged with the protection of all Government property within the area turned over to the State, and shall be responsible for any damages thereto which may accrue as the result of its use and occupation of the reservation.

6. That any sum which may have to be expended after revocation or termination of this license in putting any premises or property hereby authorized to be occupied or used in as good condition for use by the United States as at the date of this license, fair wear and tear and damage by the elements excepted, shall be repaid by the State of Arkansas on demand.

Witness my hand this 15th day of May, 1922.

J. N. Wainwright, the Assistant Secretary of War.

EXHIBIT C

Camp Pike, Arkansas, October 17, 1922.

I acknowledge to have received for the State of Arkansas from Edwin C. Gere, Captain Q. M. C., representing the War Department, the property included in Revocable License dated May 15, 1922, and not other.

[fol. 138] 1. All real estate comprising the U. S. Military Reservation of Camp Pike, Arkansas, and the target range.

2. Utilities pertaining to Camp Pike:

(a) Roads and walks as they now stand.

(b) 10,000 gallon gasoline storage tank, with filling station.

(c) All railroad tracks except that portion northeast of point marked "B" in blue pencil on Map "A."

(d) The necessary lighting facilities leading from the Camp transformer station to the buildings turned over to the State of Arkansas.

(e) The water system pertaining to buildings turned over to the State of Arkansas, including the booster stations, all wells, shelter and pumping equipment.

(f) The entire sewage system of the Camp.

(g) The heating plants of Officers' Quarters within the area outlined in yellow of Map "A," and in No. 2355; the radiation in all other buildings turned over to the State of Arkansas, and the hot water heaters in bath houses in areas and buildings turned over to the State of Arkansas.

Thomas C. McRae, Governor, by Henry F. Fredeman, Asst. Adjt. General.

[fol. 139] EXHIBIT D

2nd License

Revocable License

The State of Arkansas is hereby granted a license, revocable at will by the Secretary of War, to occupy and use in connection with the organization and training of its National Guard, Government property at Camp Pike, Arkansas, as follows:

1. Land, Buildings, Etc.

(a) All land, including that comprising the target range, roads and walks thereon, all buildings, housing utilities and all storehouses, including buildings constructed or used for storage purposes.

2. Utilities

(a) All railroad tracks, except that portion extending northeasterly from the railroad junction situated west of D Street between North Avenue on the south and North Boulevard on the North, and between Well No. 2 and Building F. 100.

(b) The two pumping stations.

(c) Transformer stations, underground improvements with their above-ground connections, such as water mains and pipes, water tanks, fire plugs, sewers and sewage disposal plants.

[fol. 140] This License is granted upon the following provisions and conditions:

1. That all of the foregoing utilities, buildings, roads, and walks on the reservation, except such utilities and buildings as may be sold to the State and except the railroad track reserved under 2 (a) supro, shall be maintained and kept in thorough repair by the State at all times and shall upon the revocation or relinquishment of this license, be returned to the United States, without alteration, in as good condition as when received, fair wear and tear and damage by elements excepted.

2. That the United States reserves the right to occupy for War Department needs any or all of the store houses hereby licensed, including all buildings constructed for storage purposes or now in use by the War Department for such purpose.

3. That the State of Arkansas shall care for and protect all Government property within the area turned over to the State and shall be responsible for any damage thereto which may accrue as the result of its use and occupation of the reservation.

4. That no permanent construction work shall be placed on the reservation without specific authority of Congress.

5. That any sum that may have to be expended after revocation or termination of this license in putting any premises or property hereby authorized to be occupied or used in as good condition for use by the United States as [fol. 141] at the date of this license, fair wear and tear and damage by the elements excepted, shall be repaid by the State of Arkansas on demand.

6. That this license is granted in lieu of the license granted to the State of Arkansas under date of May 15, 1922, to occupy and use real estate, buildings, etc., on this reservation, which said license is hereby revoked.

Witness my hand this 30th day of November, 1922.

J. N. Wainwright, The Assistant Secretary of War.

Accepted: Thomas C. McRea, Governor of Arkansas.
Dec. 22, 1922.
A true copy.

EXHIBIT E

War Department, Office of the Quartermaster General of the Army, Washington

K-Re-602.2 Camp Pike, Ark., August 10, 1922.

The Adjutant General of the State of Arkansas, Little Rock, Arkansas.

[fol. 142] DEAR SIR: It appears that the Arkansas Honorary Commission having jurisdiction and control of all of the buildings, improvements and real estate which have been turned over to the State of Arkansas by the United States for military purposes under revocable lease, is in doubt as to whether or not the Commission has authority to sell or dispose of any of the buildings, improvements or fixtures covered by this revocable lease.

For your information and for the information of the Honorary Commission, you are advised that the transfer of this property under the revocable lease was for military training purposes and did not include the authority to sell any of the buildings, improvements or fixtures included in the transfer. The Commission has, however, authority to salvage alternate buildings for the purpose of decreasing fire risk and of utilizing the material obtained therefrom to keep in repair the remaining buildings turned over to the State of Arkansas. A photostat copy of a letter from the Adjutant General of the Army specifically stating the policy of the Government in this matter is enclosed to you herewith.

Very truly yours, (Signed) A. C. Dalton, Acting Quartermaster General.

1-encl.
(Letter 9/31/22.)

[fol. 143] EXHIBIT F

War Department, the Adjutant General's Office, Washington

AD 602.3

(7-29-22). (Miscl.) 4. Camp Pike, Ark., July 31, 1922.

Subject: Transfer of Camp Pike with certain buildings and utilities to the State of Arkansas.

To: The Quartermaster General.

1. With reference to instructions from this office on the above subject dated March 29, 1922 (AG 602.3 Camp Pike, Ark. 3-28-22), you are further advised that in turning over buildings within certain designated boundaries to the State of Arkansas, the latter was given authority to salvage alternate buildings for the purpose of decreasing fire risk and of utilizing material obtained therefrom to keep in repair the remaining buildings turned over to them. No authority, however, was granted to the State of Arkansas to sell any of the buildings turned over to them.

By order of the Secretary of War:

(Signed) Robert Collins, Adjutant General.

(Endorsed): Filed Jun- 24, 1925. W. E. Greene, Chancery Clerk.

[fol. 144] IN CHANCERY COURT OF PULASKI COUNTY

ORDER MAKING AGREED STATEMENT OF FACTS A PART OF RECORD

June 4, 1925.—Order: On this day there being exhibited in open court a certain stipulation of counsel in the above entitled cause, wherein it appears that certain facts in regard to the status of lands generally designated as "Camp Pike" have been agreed upon for submission in this cause upon which decree shall be rendered, same being executed by Homer Adkins, as Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas, plaintiff, by J. C. Marshall, his attorney of record, and Surplus Trading

Company, defendant, by Rose, Hemingway, Cantrell & Loughborough, its attorneys of record, and it appearing that said agreed statement of facts was filed in this cause on the 4th day of June, 1925; it is, therefore, considered, ordered and adjudged that the same be made a part of the record in this cause, and hereafter considered as of the same status as depositions duly taken (Record Book 73, page 98).

[fol. 145] IN SUPREME COURT OF ARKANSAS

9977

HOMER M. ADKINS, as Sheriff, et al., Appellants,

v.

SURPLUS TRADING COMPANY, et al.

Appeal from Pulaski Chancery Court

ORDER OF SUBSTITUTION—June 20, 1927

Come the appellants herein and show to the Court that the term of office of the said Homer M. Adkins as Sheriff and ex-officio collector of Pulaski County, has expired, and it is suggested that J. M. Haynie, the present sheriff and collector be substituted as appellant herein, in lieu of the said Adkins.

Being fully advised, the said motion is by the Court sustained, and it is now here ordered that the said J. M. Haynie, as sheriff and ex-officio collector of Pulaski County be, and, he is hereby, substituted as a party appellant herein, in lieu of the said Homer M. Adkins, and, with such substitution, that the cause proceed to final determination.

IN SUPREME COURT OF ARKANSAS

SUBMISSION—June 20, 1927

The following causes being regularly called, come the parties thereto by their attorneys and solicitors, and said [fol. 146] causes are submitted upon the transcripts of the

records and the briefs filed, and are by the Court severally taken under advisement, viz:

* * * * * * *

IN SUPREME COURT OF ARKANSAS

[Title omitted]

DECREE—June 27, 1927

This cause came on to be heard upon the transcript of the record of the chancery court of Pulaski County, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in so much of the proceedings and decree of said chancery court as dismisses the complaint of the appellant in so far as the same applied to the taxes of the year 1923; but that as to the taxes of the year 1922, the holding of the chancery court is erroneous, and should be reversed.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, in so far as the complaint applied to the taxes for the year 1923, affirmed with costs.

It is further ordered and decreed that the decree of said chancery court in this cause rendered, in so far as the complaint applies to the taxes of the year 1922, be, and the same is hereby, for the error aforesaid, reversed, annulled [fol. 147] and set aside with costs, and that this cause be remanded to said chancery court with directions to enter a decree allowing the sheriff and collector of Pulaski County to recover of the said appellee, Surplus Trading Company, the amount of taxes and penalty for the year 1922.

It is further ordered and decreed that said appellants recover of said appellees all their costs in this Court in this cause expended, and have execution thereof.

[fol. 148] IN SUPREME COURT OF ARKANSAS

[Title omitted]

OPINION—June 27, 1927

This suit was brought by the sheriff and collector of Pulaski County, Arkansas, against the Surplus Trading

Company to recover certain taxes for the years 1922 and 1923, which the complaint alleges were due by it upon personal property situated in Pulaski County, Arkansas, which it had failed to assess for the years 1922 and 1923 and which the assessor had assessed as property erroneously left off of the tax rolls and to which he had attached the statutory penalty.

The facts necessary to determine the issues raised by the appeal may be briefly stated as follows:

The Surplus Trading Company is a partnership composed of various firms, corporations and individuals. It was organized for the purpose of dealing in military supplies of various kinds owned by the United States and left over after the World War. On April 21, 1922, the Surplus Trading Company paid the United States the sum of $138,492.65 for 87,143 blankets situated on the Camp Pike Military Reservation in Pulaski County, Arkansas. It subsequently sold these blankets for a profit to various firms in the State of Arkansas and in other states. It failed to assess its property for taxation for the years 1922 and [fol. 149] 1923, and the assessor of Pulaski County duly assessed the property of said firm at an amount which he had been informed was the value of the property owned by said firm and situated in Pulaski County during the time for assessing said property in said years. The Governor of the State of Arkansas appointed an Honorary Commission to handle and sell property belonging to the United States, situated in said Camp Pike Military Reservation. This property was sold at a reduced price by the United States to said Honorary Commission for the benefit of the Arkansas National Guard. The Honorary Commission employed the Surplus Trading Company to handle and sell said property for it. The Surplus Trading Company, as part of the consideration for its employment, agreed to advance the purchase price of said personal property upon the condition that it should be repaid from the sales of said property.

Such other facts will be stated or referred to in the opinion as may be necessary for a determination of the issues raised by the appeal.

The chancellor found the issues in favor of the defendant, and it was decreed that the complaint should be dismissed for want of equity. The case is here on appeal.

HART, J. (after stating the facts):

The Camp Pike Military Reservation lies within the boundaries of Pulaski County, Arkansas, and the principal question presented for decision by this appeal relates to the power of the State and its subordinate taxing agencies to levy and collect taxes pursuant to the state laws upon personal property situated within said military reservation.

Counsel for appellee seek to uphold the decree of the [fol. 150] chancellor denying the right of the state and its subordinate agencies to levy and collect such taxes upon the authority of Concessions Co. v. Morris (Wash.) 186 Pac. 655. In that case, it was held that the Camp Lewis Military Reservation, which was donated by Pierce County to the United States by consent of the state legislature, excepting only the right to serve criminal and civil process therein, from the exclusive control of Congress, is without the state in both a jurisdictional and territoral sense, and personal property located thereon is not taxable under the state laws.

We do not agree with the reasoning of the court in that case and are of the opinion that it is contrary to the trend of the decisions of the United States Supreme Court, bearing on the question as well as to the weight of authority in the State Courts. The true rule governing cases of this sort is stated by the Virginia Supreme Court of Appeals in Nikis v. Virginia, 131 S. E. 236; 46 A. L. R. 219. In that case, the court held to be subject to a state license tax a mercantile business carried on in a railroad station situated on land ceded to the Federal government for an approach to an interstate bridge. It was there recognized that the state could not tax land or buildings situated thereon which had been deeded by the State to the United States, but it was expressly held that personal property situated in buildings upon said land owned by third parties was liable to be taxed by the state and county in which it should be found. In discussing the question, the court said.

"That the right of a state to tax the property of others located upon lands owned by the United States, although [fol. 151] it cannot tax such lands, will not be held to be abandoned by the state except for the most compelling rea-

sons, is quite manifest from several decisions of the Supreme Court of the United States."

In that case, the General Assembly of Virginia ceded the land to the United States for the abutments and approaches of a proposed bridge across the Potomac River. The State retained concurrent jurisdiction with the United States over such lands for the execution of legal process and the discharge of such other legal functions within the same as may not be incompatible with the consent given in the act. The act, also, provides that the land acquired, and the abutments and approaches of the bridge should be exempt from taxation by the state and county in which they were situated.

The Camp Pike Military Reservation was acquired by the United States under the provisions of an act of the Legislature of 1903. Acts of 1903, page 346. Section 1 of the Act provides that the State of Arkansas consents to the purchase to be made by the United States of any site or ground for the erection of any armory or arsenel, etc., and that the jurisdiction of the state within and over all grounds thus purchased by the United States is ceded to the United States. The section provides that the grant of jurisdiction shall not prevent execution of any process of the state, civil or criminal, upon any person who may be upon said premises. Section 2 provides that the State releases her right to tax any such site, grounds or real estate and all improvements which may be thereon and thereafter erected thereon, during the time the United [fol. 152] States shall be and remain the owner thereof.

Thus, it will be seen that by the terms of the act itself, it was not intended by the State to part with jurisdiction for the purpose of listing personal property of third persons on the reservation for assessment and taxation. The grant by the State expressly cedes its right to tax the land and buildings granted to the United States, and this of itself indicates an intention to reserve jurisdiction for taxation over the property of third persons located on such reservation. The United States accepted the grant upon the terms indicated and, by its acceptance, acknowledged that there was no occasion for the State to cede exclusive jurisdiction to the United States or to exempt from state taxation the property of third persons, situated upon the res-

ervation, which was not used by the United States as a public agency or instrumentality for carrying out the purpose of the grant.

In Noble v. Amoretti, 11 Wyo. 230, it was held that state taxation of the stock of goods of a licensed Indian trader located upon an Indian Reservation is not a tax upon an agency of the general government and is not a burden upon commerce with an Indian tribe. It was further held that personal property, including the stock of goods of a licensed Indian trader, located within the limits of the Shoshone Indian Reservation, and employed in the business of such trader, is subject to taxation under the laws of the State in the same manner and to the same extent as all other like property within the county.

In Oscar Daniels Co. v. City of Sault Ste. Marie, 175 N. W. 160, the Supreme Court of Michigan held that a [fol. 153] statute of that state ceding all right and title of the State of Michigan to a canal and public works thereon to the United States and retaining jurisidiction for the service of civil and criminal process, cedes less than exclusive jurisdiction, and the ceded territory is not out of the state in so far as taxation of private property is concerned. We think this holding is in accord with our own decisions and the trend of the decisions of the Supreme Court of the United States, bearing on the question.

In Exparte Gaines, 56 Ark. 227, it was held that the estate of the lessee of land belonging to the United States situated on the Hot Springs reservation was not exempt from taxation. The court said that the interest of the lessee in the land was not the property of the United States and was not a means employed by government to obtain a governmental end. It is true that in that case the decision was, also, based upon an act of Congress giving the consent of the United States to the taxation of personal property under the laws of the State of Arkansas on the Hot Springs Reservation. It will be noted, however, that the trend of reasoning in that case is in accord with the reasoning in the Virginia and Wyoming cases above cited.

In Cassels v. Wilder, 23 Haw. 61, it was held that property on a United States military reservation is subject to taxation by the Territory. In Thomas v. Gay, 169 U. S. 264, it was held that an act of the legislature of Oklahoma

Territory providing for the taxation of personal property of persons other than Indians was a legitimate exercise of the Territory's power of taxation, and when enforced in the taxation of cattle belonging to persons not resident in the Territory, grazing upon Indian reservations therein, [fol. 154] does not violate the Constitution of the United States. In Wagoner v. Evans, 170 U. S. 588, in Foster v. Pryor, 189 U. S. 325, and in Catholic Missions v. Missoula County, 200 U. S. 118, this decision was approved and followed. To the same effect, see Rice v. Hammond, 19 Okla. 419, 14 Ann. Cas. 963; County of Cherry v. Thacher (Neb.) 49 N. W. 351, and Casier v. McMillan (Montana) 56 Pac. 965.

The doctrine of these cases sustain, we think, the authority of Pulaski County to tax the personal property of third persons situated on the Camp Pike Military Reservation where the property is not used as a governmental agency and where it would be otherwise subject to taxation under the laws of the State.

It is also claimed by counsel for appellee that the tax cannot be collected because the assessment was not made in the manner provided by law. It is urged that the assessment was not made by the assessor with the assitance of the township board in accordance with the provisions of Act 147 of the Acts of 1919, providing for the taxation and valuation of taxable property in the state as construed in Hutton v. King, 134 Ark. 463. The act has been incorporated in Crawford & Moses' Digest commencing with Section 9887. Section 9910 of Crawford & Moses Digest, which is section 16 of said Act 147, provides for the manner of listing property erroneously left off the tax roll. The property in question was not assessed by the Surplus Trading Company for the year 1922 and was left off the tax roll. Subsequently, the tax assessor was notified of the ommission to list the property by the clerk and placed a value of $100,000 on the personal property of the Surplus Trading Company and designated the same as delinquent. [fol. 155] Under the provisions of the section of the statute last above referred to, it was the duty of the assessor to place a value upon property which for any reason had been omitted from the tax roll, and the township board had no duty to perform in the matter.

Again, it is insisted that said Act 147 was repealed by Act 477 passed by the Legislature of 1919. This act contains twelve sections, and it is only necessary to say that it had nothing whatever to do with the original or primary assessment of property. The only power given is with reference to the equalization of the valuation of all property which has been properly assessed.

Again, it is contended by counsel for appellee that there was an overvaluation placed upon the property of the Surplus Trading Company for the year 1922. The record shows that, on April 21, 1922, the Surplus Trading Company purchased from the United States 87,143 blankets situated on the Camp Pike Military Reservation in Pulaski County, Arkansas, and paid therefor the sum of $138,492.65. These blankets were sold afterwards by the Surplus Trading Company to various persons at a profit. It was the duty of the Surplus Trading Company to assess its property situated in Pulaski County, Arkansas. Beal-Doyle Dry Goods Co. v. Beller, 105 Ark. 370. Not having done so, it became the duty of the assessor to assess the property under the provisions provided for the manner of listing property erroneously left off of the tax roll. The valuation placed upon the property by the assessor was $100,000. If the Surplus Trading Company thought that the assessor [fol. 156] had placed an excessive valuation upon the property when compared with the value placed upon similar property, it should have pursued the remedy provided for its relief under the statute. Having failed to pursue this remedy, the courts cannot give any relief. Clay County v. Bank of Knobel, 105 Ark. 450 and cases cited. In State v. Little, 94 Ark. 217, we quoted with approval from well known authorities on taxation the following: "The courts, either of common law or equity, are powerless to give relief against the erroneous judgments of assessing bodies, except as they be especially empowered by law to do so."

It was there said that the text quoted is a rule of general application. Under the principles of law above decided, we are of the opinion that the assessment of 1922 must stand and that the sheriff had a right to institute an action for the collection of the assessment and penalty.

The case, with reference to the assessment for 1923, stands on a different footing. The testimony in the case with reference to the ownership of the property is volum-

inous, but we are of the opinion that the record plainly shows that the United States sold all the rest of the property belonging to it situated on the Camp Pike Military Reservation to an Honorary Commission appointed by the Governor of the State of Arkansas for the benefit of the Arkansas National Guard and that said Honorary Commission appointed the Surplus Trading Company as its agent to sell said property. The title to the property was in said Honorary Commission, and the Surplus Trading Company was to advance the money necessary for the payment of the purchase price to the United States. After the Surplus Trading Company had been reimbursed for the [fol. 157] purchase money advanced by it, it was to receive half of the profits for selling the property and for advancing the purchase price. This is the effect of our decision upon the same state of facts in Adkins v. Kalter, 171 Ark. 1111. The assessment was made by the assessor in 1923 on certain moneys deposited in various banks in the City of Little Rock to the credit of said Honorary Commission. The assessment was made by the assessor upon the theory that part of the money belonged to the Surplus Trading Company and it had failed to assess the same as required by law. Under the facts stated as we construe them, this money deposited in the various banks in Little Rock to the credit of the Honorary Commission did not belong to the Surplus Trading Company at the time the assessment was made. It belonged to the Honorary Commission as trustee for the benefit of the Arkansas National Guard and was, on that account, the property of the State. It is true that the Surplus Trading Company had earned a portion of it by its services in the matter as above stated, but it did not actually have any right to the money until the Honorary Commission settled with it and paid it for its services. Until that was done, the case would stand like that of any other agent who had performed services for his principal and had collected money for him but had not yet been paid for his services. Under this state of the record, we have the case of an illegal assessment and not one of excessive valuation or an erroneous assessment. The assessment being absolutely void, the assessor had no right to make it. As we have already seen, the suit was brought by the col- [fol. 158] lector to recover taxes from the Surplus Trading Company, and it was proper for the chancellor to grant all

relief legal or equitable to which the parties to the lawsuit were entitled. Fulcher v. Dierks Lumber & Coal Co., 164 Ark. 261.

The result of our views is that the chancellor should have held the assessment for the year 1923 to be illegal and void and properly restrained the sheriff from collecting any amount of taxes from the Surplus Trading Company under it. The chancery court, however, erred in holding that the sheriff and collector was not entitled to recover the taxes for the year 1922 and the penalties provided by the statute as indicated in the opinion.

Therefore, the decree will be reversed and the cause will be remanded with directions to allow the sheriff and collector to recover against the Surplus Trading Company the amount of taxes and penalties for the year 1922. It is so ordered.

[fols. 159-161] Appellee's petition for rehearing covering three pages, filed July 13, 1927, omitted from this print. It was denied and nothing more by order September 26, 1927.

[fols. 162-164] Appellant's petition for rehearing, covering 3 pages, filed July 14, 1927. Omitted from this print. It was denied and nothing more by order Sept. 26, 1927.

[fol. 165] IN SUPREME COURT OF ARKANSAS

ORDER EXTENDING TIME—July 11, 1927

On motions presented in the following cases for time in which to prepare and file briefs in support of the several petitions for rehearing to be filed therein, time is allowed for such briefs, to the parties and as stated below, provided the several petitions are filed within the time allowed by law, viz:

* * * * * * *

9977, J. M. Haynie, as Sheriff, etc., et al., v. Surplus Trading Company; 2 weeks to appellee from date.

IN SUPREME COURT OF ARKANSAS

SUBMISSION OF PETITION FOR REHEARING—September 19, 1927

The petitions for rehearing filed in the following causes being called, they are now submitted with the responses and briefs filed, and are by the Court severally taken under advisement, viz:

* * * * * * *

9977, J. M. Haynie, Sheriff, etc., et al., v. Surplus Trading Company.

[fol. 166] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING MOTIONS FOR REHEARING—September 26, 1927

Being fully advised, the petitions for rehearing filed in the following causes are by the Court severally overruled, viz:

* * * * * * *

9977, J. M. Haynie, Sheriff, etc., et al., v. Surplus Trading Company et al.

[fol. 167] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 168] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed October 14, 1927

Surplus Trading Company, a co-partnership, composed of S. Steinfeld & Company, a co-partnership composed of Nathan Steinfeld and Ferdinand Seligman; A. Schaap & Sons, a co-partnership composed of Ervin Schaap, Joseph Schaap and Morris Schaap; Joseph Frenkel, an individual;

Kalter-Cerf Mercantile Company, a corporation organized and existing under and by virtue of the laws of the State of New York, Plaintiff in Error, makes and files this, its assignment of errors:

I

The Supreme Court of Arkansas erred in holding that personal property of an individual, situated on a military reservation of the United States is subject to taxation by the State of Arkansas, it being admitted that said reservation was composed entirely of land owned in fee by the United States and purchased for use as such reservation with the consent of the State of Arkansas.

II

The said court erred in holding that Act 180 of the General Assembly of Arkansas of 1903 ceding the jurisdiction of the State of Arkansas to the United States over said lands impliedly reserved the right to the State of Arkansas to tax personal property of individuals situated thereon.

[fol. 169]

III

Based on the erroneous conclusions in the foregoing assignments of error, the said court erred in reversing the decree of the Chancery Court of Pulaski County, Arkansas, in so far as the complaint applies to the taxes for the year 1922.

For which errors Surplus Trading Company prays that the judgment of the Supreme Court of Arkansas reversing the decree of the Chancery Court of Pulaski County, Arkansas, in so far as the complaint applies to the taxes for the year 1922 be itself reversed and a judgment rendered in favor of Surplus Trading Company, and for costs.

G. B. Rose, D. H. Cantrell, J. F. Loughborough, A. W. Dobyns, A. F. House, Attorneys for Plaintiff in Error.

Read on application for Writ of Error this 11th day of October, 1927.

Jesse C. Hart, Chief Justice of the Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 170] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed October 14, 1927

To the Honorable William Howard Taft, Chief Justice of the United States, and the Associated Justices of the Supreme Court of the United States:

Now comes Surplus Trading Company, a co-partnership, composed of S. Steinfeld & Company, a co-partnership composed of Nathan Steinfeld and Ferdinand Seligman; A. Schaap & Sons, a co-partnership composed of Ervin Schaap, Joseph Schaap and Morris Schaap; Joseph Frenkel, an individual; Kalter-Cerf Mercantile Company, a corporation organized and existing under and by virtue of the laws of the State of New York, plaintiff in error in the above cause, and would show unto this Honorable Court that in the record and proceedings and rendition of the decree in the above cause, by the Supreme Court of the State of Arkansas, it being the highest court of said State in which a decision could be had upon the said suit between J. M. Haynie, as Sheriff and Ex Officio Collector for Pulaski County, Arkansas, and Surplus Trading Company, manifest error has occurred greatly to its damage, whereby petitioner feels aggrieved.

That in the record and proceedings it will appear that there was drawn in question the validity of Statutes of the State of Arkansas, upon the ground of repugnance to the Constitution of the United States, and the decision was in [fol. 171] favor of the validity of the said statutes, in that the Supreme Court of Arkansas applied and enforced statutes of the State of Arkansas of general scope, which related to the taxing of personal property within said State, and the decision was against a particular transaction, towit, the taxing of personal property of individuals, situated on Camp Pike Military Reservation, within the territorial limits of Pulaski County, Arkansas, as to which transaction there was a distinct and timely insistence by petitioner that if so applied the statutes were void under the Federal Constitution.

Wherefore, petitioner prays that it be granted a writ of error, and that a transcript of the record, proceedings and papers upon which said orders were made, duly authenticated, be ordered sent to the Supreme Court of the United States, at Washington, District of Columbia, under the rules of said court in such cases made and provided, that the same may be inspected and corrected as according to law and justice should be done.

G. B. Rose, D. H. Cantrell, J. F. Loughborough, A. W. Dobyns, A. F. House, Attorneys for Petitioner.

Writ of error allowed this 11th day of October, 1927.

Jesse C. Hart, Chief Justice of the Supreme Court of Arkansas.

[File endorsement omitted.]

[fols. 172 & 173] Supersedeas bond on writ of error for $2,500, approved and filed Oct. 14, 1927, omitted in printing.

[fol. 174] IN SUPREME COURT OF ARKANSAS

WRIT OF ERROR—Filed Oct. 14, 1927

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of Arkansas, being the highest court of the law or equity in said State, in which a decision could be had in the said suit between J. M. Haynie, as Sheriff and Ex Officio Collector of taxes for Pulaski County, Arkansas, and Surplus Trading Company, a co-partnership composed of S. Steinfeld & Company, a co-partnership composed of Nathan Steinfeld and Ferdinand Seligman; A. Schaap & Sons, a co-partnership composed of Ervin Schaap, Joseph Schaap

and Morris Schaap; Joseph Frenkel, an individual, Kalter Cerf Mercantile Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, wherein there was drawn in question the validity of statutes of said State on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity; and a manifest error hath happened to the great damage of the said Surplus Trading Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice to the parties aforesaid in this behalf do command you, if judgment be therein given, that under your seal, distinctly and openly do send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court, to be then and there held. That the recordings and proceedings aforesaid, being inspected, [fol. 175] the said Supreme Court may consider further to be done therein to correct that error, what of right and according to the laws and Constitution of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the said Supreme Court, the 14th day of October, in the year of Our Lord, One Thousand Nine Hundred and Twenty Seven.

Issued at office in the City of Little Rock, Arkansas, with the seal of the District Court of the United States for the Western Division of the Eastern District of Arkansas, dated as aforesaid.

Sid B. Redding, Clerk of the District Court of the United States for the Western Division of the Eastern District of Arkansas, by W. P. Field, D. C. (Seal.)

Allowed: Jesse C. Hart, Chief Justice.

[File endorsement omitted.]

[fol. 176] Certificate of lodgment omitted in printing.

[fol. 177] Citation, in usual form, showing service, H. W. Applegate, filed Oct. 14, 1927, omitted in printing.

[fol.178] On this 14th day of October, 1927, at Little Rock, Arkansas, service of the attached and foregoing citation is acknowledged to have been made and accepted upon J. M. Haynie, as Sheriff and Ex Officio Collector for Pulaski County, Arkansas.

H. W. Appelgate, Atty. Gen. Sam T. and Tom Poe, by Sam Poe, Attorneys for J. M. Haynie, as Sheriff and ex Officio Collector for Pulaski County, Arkansas.

[fol. 179] Return to writ of error omitted in printing.

[fol. 180] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH PLAINTIFF IN ERROR WILL RELY AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED

Surplus Trading Company, Plaintiff in Error, submits the following points upon which it intends to rely in this court, towit:

I. The blankets belonging to Surplus Trading Company, which were the subject of the assessment of the personal property tax of 1922, by the assessor of Pulaski County, Arkansas, were situated on Camp Pike Military Reservation.

II. The lands comprising Camp Pike Military Reservation were purchased by the United States, with the consent of the State of Arkansas, under the provisions of Act 180 of the General Assembly of Arkansas, of 1903.

III. Camp Pike Military Reservation, in contemplation of Article I, Section 8, Clause 17, of the United States Constitution is beyond the taxing jurisdiction of the State of Arkansas.

IV. There is neither an express nor an implied reservation in Act 180 of the General Assembly of Arkansas, of 1903, to State or Arkansas of jurisdiction to tax property of third persons located on lands purchased by the United States in contemplation of said Act.

[fol. 181] V. The taxing by the State of Arkansas, of the blankets owned by Surplus Trading Company, and situated on Camp Pike Military Reservation, which Reservation is outside the taxing jurisdiction of the State of Arkansas, would constitute a taking of property without due process of law.

Surplus Trading Company, plaintiff in error, directs that the entire record filed and docketed in this cause is necessary for the consideration of the points upon which it will rely, except, however, plaintiff in error directs that the record be reduced in pursuance of the following instructions, towit:

1. Exhibit A and B to Amended and Substituted Complaint with exhibits, (original transcript, pages 98 and 99; docketed record, pages 30 and 31) are itemized statements showing the amount of taxes, penalty and costs alleged to be due from Surplus Trading Company for the years 1922 and 1923, respectively. It will be unnecessary to print these two exhibits in view of the fact that the information contained therein is set forth in the amended and substituted complaint, which is copied in full in the docketed record.

2. Exhibits 1 and 2 to testimony of Ernest W. Martineau, (original transcript, pages 128-129; docketed record, pages 45, 46) are statements of alleged personal property tax due by Surplus Trading Company for the years 1922 and 1923, respectively. Print only those lines containing long hand writing or typewriting, with date and headings of "Valuation" and "Taxes" over the two columns.

3. Exhibit B to testimony of W. T. Dorough, witness for plaintiff, the assessment list appearing in stipulation to amend original transcript, filed June 20, 1927, in Arkansas Supreme Court, (docketed record page 62) is the copy of the original assessment list for 1922. Print only those lines containing long hand writing or typewriting, with date "1922" and heading "Assessment List."

4. Exhibit D to testimony of W. T. Dorough, witness for plaintiff, (original transcript 189; docketed record, page 71), is the copy of original assessment list for 1923, against [fol. 182] Surplus Trading Company. Print only those lines containing typewriting, with date "1923" and heading "Assessment List."

5. Fifteen photographic copies of ledger sheets appear as exhibits to the testimony of Ben Sagor, (original transcript pages 354-368, inclusive; docketed record pages 96 to 110, inclusive). Print only the following ledger sheets, towit: Ledger sheet 2, docketed record page 96. Ledger sheet 10, docketed record page 97. Ledger sheet 20, docketed record page 99. Ledger sheet 40, docketed record page 104. Ledger sheet 50, docketed record page 107. Ledger sheet 60, docketed record page 109.

Respectfully submitted.

G. B. Rose, D. H. Cantrell, J. F. Loughborough, A. W. Dobyns, A. F. House, Attorneys for Surplus Trading Company, Plaintiff in Error.

Receipt is acknowledged of a copy of this instrument, this 7th day of January, 1928, at Little Rock, Arkansas.

H. W. Applegate, Sam Poe, Tom Poe, Attorneys for J. M. Haynie, as Sheriff and ex-Officio Collector for Pulaski County.

[fol. 183] [File endorsement omitted.]

Endorsement on cover: File No. 33,118. Arkansas Supreme Court. Term No. 666. Surplus Trading Company, plaintiff in error, vs. J. M. Haynie, as sheriff and ex-officio collector of taxes for Pulaski County, Arkansas. Filed Dec. 27th, 1927. File No. 33,118.

FILE COPY

APR 13 1928

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

SURPLUS TRADING COMPANY ..... *Plaintiff in Error,*

v.

No. 382

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS ..... *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

BRIEF FOR PLAINTIFF IN ERROR.

G. B. ROSE,
D. H. CANTRELL,
J. F. LOUGHBOROUGH,
A. W. DOBYNS,
A. F. HOUSE,
Solicitors for Plaintiff in Error.

SUBJECT INDEX.

	Pages.
JURISDICTION	1-5
STATEMENT	5-11
SPECIFICATION OF ERRORS	11-12
SUMMARY OF ARGUMENT	12-14
ARGUMENT:	
I. Blankets situated within Camp Pike	15-20
II. Camp Pike purchased by United States with consent of Arkansas	20-22
Act 180 of 1903, Ark.	20-21
III. Camp Pike beyond taxing jurisdiction of Arkansas, under Art. I, Sec. 8, Cl. 17 of U. S. Constitution	22-32
IV. Act 180 of Ark. 1903 contains no reservation of jurisdiction in Arkansas	32-37
V. Taxing of blankets by Arkansas would constitute taking property without due process of law	37
CONCLUSION	38
APPENDIX, Act 147 of Ark. 1919	39-46

TABLE OF CASES.

Andrews v. Virginian Ry. Co., 248 U. S. 272	1
Arlington Hotel Co. v. Fant, (Ark. Mch. 12, 1928-not rep.)	35
Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203	38
Act 180 of 1903	20-21
Act 147 of 1919 (Appendix)	39
Battle v. United States, 209 U. S. 36	32
Benson v. United States, 146 U. S. 325	26
Cassels v. Wilder, 23 Haw. 61	28, 29
Catholic Missions v. Missoula County, 200 U. S. 118	30
Chicago, R. I. & P. Ry. Co. v. McGlinn, 144 U. S. 542	26, 36
Chicago Great Western R. Co. v. Basham, 249 U. S. 164	1-2
Citizens Bank of Michigan City v. Opperman, 249 U. S. 448	2
Concessions Co. v. Morris, 109 Wash. 46, 186 Pac. 655	14, 25, 27, 31
Cosier v. McMillan, 22 Mont. 484	31
County of Cherry v. Thacher, 49 N. W. 351	30
Cooley on Taxation III, Sec. 1075, p. 2185	18
Cooley on Taxation (4th Ed.) Vol. 1, p. 236	37
Cooley on Taxation (4th Ed.) Vol. 1, p. 222-3	38

Pages

Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282 4
Daniels Co. v. Sault Ste. Marie, 175 N. W. 160 28
Egan v. Hart, 165 U. S. 188 ..... 12, 19
Ex Parte Gaines, 56 Ark. 227 28
Fant v. Arlington Hotel Co., 170 Ark. 440 ..... 32, 35
Fiske v. Kansas, 47 Sup. Ct. 655 5
Foster v. Pryor, 189 U. S. 325 30
Ft. Leavenworth R. Co. v. Lowe, 114 U. S. 525 ..... 14, 23, 26, 33
Gibbons v. Dist. of Columbia, 116 U. S. 404 ..... 14, 34
Grayson v. Harris, 267 U. S. 352 ..... 12, 19
Haynie v. Surplus Trading Co., 174 Ark. 507 ..... 1, 10
International Ry. Co. v. Davidson, 257 U. S. 506 5
Judicial Code, Sec. 237 (U. S. C. Title 28, Sec. 344, Par. a) 1
Kendall v. United States, 12 Pet. 619 35
Lowe, Leavenworth Ry. Co. v., 114 U. S. 525 ..... 14, 23, 26, 33
Lowe v. Lowe, 150 Md. 592 35
Loughborough v. Blake, 5 Wheat. 317 34-35
Mattingly v. Dist. of Columbia, 97 U. S. 687 35
Nikis v. Virginia, 131 S. E. 236 27
Noble v. Amoretti, 11 Wyo. 230 27
Oscar Daniels Co. v. City of Sault Ste. Marie, 175 N. W. 160 28
Parsons v. Dist. of Columbia, 170 U. S. 53 35
Pothier v. Rodman, 291 Fed. 311 32
Rice v. Hammond, 19 Okla. 419 30
Rhode Island Hospital Trust Co. v. Doughton, 270 U. S. 69 38
Santa Clara County v. So. Pac. R. Co., 118 U. S. 394 ..... 13, 18
Shoemaker v. United States, 147 U. S. 282 35
Steele v. Halligan, 229 Fed. 1011 33
Surplus Trading Co., Haynie v., 174 Ark. 507 ..... 1, 10
Thomas v. Gay, 160 U. S. 264 30
United States v. Cornell, 2 Mason 60, Fed. Cas. 14867 ..... 14, 33, 34
United States v. Watkins, 22 Fed. (2d) 437 32
United States v. Wurtzbarger, 276 Fed. 754 32
Wachovia Bank & Trust Co. v. Doughton, 272 U. S. 567 38
Wagoner v. Evans, 170 U. S. 588 30
Western Union Tel. Co v. Kansas, 216 U. S. 1 38
Webb v. White Engineering Corp'n, 204 Ala. 429 32
Western Union Tel. Co. v. Chiles, 214 U. S. 274 32
Williams v. Arlington Hotel Co., 22 Fed. (2d) 669 ..... 26, 32, 35

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

SURPLUS TRADING COMPANY.....*Plaintiff in Error,*

v. No. 666.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS.....*Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

BRIEF FOR PLAINTIFF IN ERROR.

JURISDICTION.

Jurisdiction of this court is invoked by writ of error to the Supreme Court of Arkansas, under the provisions of Judicial Code, Sec. 237 (U. S. C. Title 28, Sec. 344, Par. a).

The date of the decree in the Supreme Court of Arkansas in the case of *Haynie* v. *Surplus Trading Co.*, 174 Ark. 507, 297 S. W. 822, was June 27, 1927 (R. 87), which decree, however, did not become final until September 26, 1927 (R. 96), when petitions for rehearing filed by both appellant and appellee in the State court were severally overruled. (*Andrews* v. *Virginian Ry. Co.*, 248 U. S. 272; *Chicago Great*

Western R. Co. v. *Basham*, 249 U. S. 164; *Citizens Bank of Michigan City, Indiana*, v. *Opperman*, 249 U. S. 448, 450).

Petition for writ of error together with assignment of errors were presented to the Chief Justice of the Supreme Court of Arkansas on October 11, 1927, on which day writ of error was allowed (R. 96-99). The writ was issued under date of October 14, 1927, with evidence of service of citation in the usual form, and supersedeas bond filed on the same day (R. 99-101). The case was docketed, and record filed with the clerk of this court, according to the filing mark (R. 103), on December 27, 1927, within the return period of the writ of error (R. 99-100) as extended by proper orders (R. 1, 2).

This case originated in the Chancery Court of Pulaski County, Arkansas, where, on July 19, 1923, suit was instituted by the sheriff and ex-officio collector of Pulaski County, etc., as plaintiff (R. 6) praying judgment for certain delinquent personal property taxes alleged to be due from Surplus Trading Company, later the plaintiff filing an amended and substituted complaint on June 19, 1924 (R. 11-20). The defendant, Surplus Trading Company, duly filed its separate answer (R. 20-24), setting up, among other defenses, not necessary to be considered at this time, that it had no property in Pulaski County subject to assessment on tax day in 1922 (R. 23). In support of its defense, the defendant took proof showing the location of its property on May 1, 1922, which was tax day under Act 147 of the General Assembly of Arkansas of 1919 (Appendix), said proof consisting of testimony of Ben Sagor (R. 56-71) and the testimony of Max Kalter (R. 71-76). To obviate the necessity of further proof regarding the facts concerning the title and physical nature of Camp Pike Military Reservation and the facts surrounding its acquisition, an agreed statement of facts was entered into by the parties litigant (R. 77-85).

It was argued in the trial court, pursuant to the defense set up by Surplus Trading Company and its proof in support thereof, that Camp Pike Military Reservation was a body of land to which the jurisdiction of the State of Arkansas, in so far as taxation is concerned, did not extend,

but that the United States had exclusive jurisdiction and power of exclusive legislation over said tract of land, which necessarily made any taxing statute of Arkansas, and specifically Act 147 of 1919, invalid and of none effect whatsoever, in so far as its applicability to that body of land was concerned, because of the specific provisions of Article 1, Section 8, Clause 17 of the United States Constitution.

The Chancery Court of Pulaski County dismissed the complaint for want of equity, and found for the defendant, Surplus Trading Company, making no specific findings of either law or fact in its decree (R. 24-26).

On the appeal to the Supreme Court of Arkansas, the chancery case being tried *de novo* in the appellate court, the same contention was vigorously put forward, it being recognized as the principal question in the case, for the court stated at the beginning of its opinion, as follows (174 Ark. 509-510; R. 89):

> "The Camp Pike Military Reservation lies within the boundaries of Pulaski County, Arkansas, and the principal question presented for decision by this appeal relates to the power of the State and its subordinate taxing agencies to levy and collect taxes pursuant to State laws upon personal property situated within said Military Reservation.
>
> "Counsel for appellee seek to uphold the decree of the chancellor denying the right of the State and its subordinate agencies to levy and collect such taxes upon the authority of *Concessions Co.* v. *Morris* (Wash.) 186 Pac. 655."

The Supreme Court of Arkansas, by holding in favor of the validity of said statute, even as to its applicability to lands of the status of Camp Pike Military Reservation, upheld the action of Pulaski County in taxing the merchandise of Surplus Trading Company located within Camp Pike Military Reservation, and, as an incident to such holding, further held that the consent of the State of Arkansas to the purchase by the United States of the lands comprising said Reservation, expressed in Act 180 of the General Assembly of Arkansas of 1903, was qualified to the extent of impliedly reserving to the State of Arkansas

jurisdiction to tax the property of third persons located on said reservation (174 Ark. 511, 512; R. 90).

Thus, in addition to holding Act 147 of 1919 valid and applicable to Camp Pike Military Reservation, the Supreme Court of Arkansas so construed Act 180 of 1903 as to make said act itself repugnant to article 1, section 8, clause 17 of the United States Constitution, which contention was strongly put forth by the present plaintiff in error at the first opportunity which it had to present such an argument, to-wit, on petition for rehearing. Thus the first ground set up by plaintiff in error in its petition for rehearing in the Supreme Court of Arkansas was as follows:

> "The court erred in deciding the Federal question of the power of the State to levy and collect taxes upon personal property of nonresidents of the State of Arkansas situated within a United States Military Reservation, and by upholding such power limited the rights of the National Government which existed under a State statute expressly ceding the jurisdiction of the State of Arkansas to the United States" (Fols. 159-161; R. 95).

Plaintiff in error, in support of the jurisdiction of this court by writ of error, as above set out, directs attention to the case of *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, where, at pp. 288-290, it is said:

> "In the State court the plaintiff did not simply claim a right or immunity under the Constitution of the United States, but distinctly insisted that as to the transaction in question the Kentucky statute was void, and therefore unenforceable, because in conflict with the commerce clause of the Constitution. The court did not accede to the insistence, but applied and enforced the statute. Of course, that was an affirmation of its validity when so applied. *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116, 144; *McCullough* v. *Virginia*, 172 U. S. 102, 116-117; *General Oil Co.* v. *Crain*, 209 U. S. 211, 228; *Corn Products Refining Co.* v. *Eddy*, 249 U. S. 427, 432. And see *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, 3, 27. The case is therefore of the class described in the first of the provisions which we have quoted from the jurisdictional section. That the statute was not claimed to be

invalid *in toto* and for every purpose does not matter. A statute may be invalid as applied to one state of facts and yet valid as applied to another. *Poindexter* v. *Greenhow*, 114 U. S. 270, 295; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne*, 224 U. S. 354; *Kansas City Southern Ry. Co.* v. *Anderson*, 233 U. S. 325. Besides a litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage. *Yazoo & Mississippi Valley R. R. Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217; *Jeffrey Manufacturing Co.* v. *Blagg*, 235 U. S. 571, 576. Neither does it matter on what ground the court upheld and enforced the statute. The provisions quoted from the jurisdictional section show that in cases where the validity of a State statute is drawn in question because of alleged repugnance to the Constitution, the mode of review depends on the way in which the State court resolves the question. If it be resolved in favor of the validity of the statute, the review may be on a writ of error; and if it be resolved against the validity the review can only be on writ of certiorari. The provisions take no account of the particular grounds or reasons on which the decision is put."

* * * * * *

"Our conclusion on the jurisdictional question is that, as the State court applied and enforced to the plaintiff's disadvantage a State statute which the plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error. Like rulings on like grounds will be found in *Eureka Pipe Line Co.* v. *Hallanan, ante*, 265, and *United Fuel Gas Co.* v. *Hallanan, ante*, 277."

See also *International Railway Co.* v. *Davidson*, 257 U. S. 506, and *Fiske* v. *State of Kansas* (1927), 47 Sup. Ct. 655.

STATEMENT.

In the early part of 1922 the War Department had located on Camp Pike Military Reservation, Pulaski County, Arkansas, a large quantity of surplus army property and supplies, consisting of woolen army blankets and shirts, shoes, and various other materials and supplies. Bids were asked for this surplus property, the date of sale

being set for March 31, 1922 (R. 57), and Surplus Trading Company, plaintiff in error, was the high bidder at this sale for all of said property; but the sale was not consummated (R. 58).

Surplus Trading Company was and is a mercantile partnership, with its principal office in New York City, and engaged solely in the business of buying and selling surplus army goods. The partnership was composed of the following: S. Steinfeld & Co., a partnership consisting of Nathan Steinfeld and Ferdinand Seligman; Kalter-Cerf Mercantile Co., a corporation; Joseph Frenkel, an individual; A. Schaap & Sons, a partnership consisting of Abraham Schaap, Erwin Schaap, Joseph Schapp and Morris Schaap; all of said persons, firms and the corporation composing said partnership being nonresidents of Pulaski County and the State of Arkansas, and being domiciled in the State of New York (R. 30, 56).

At the request of a delegation of Arkansas citizens, the Secretary of War reopened the bidding for the surplus property, and on May 8, 1922, practically all of said property, excepting the woolen army blankets, was awarded to a trustee for an honorary board which was later known as Camp Pike Honorary Commission (R. 73-74).

Plaintiff in error purchased from the United States a large lot of woolen blankets, numbering 87,143, for $138,492.65 (R. 59-60, 74; 174 Ark. 508, 509), which blankets were stored in United States military warehouses within Camp Pike Military Reservation on April 21, 1922, when the title changed from the United States to Surplus Trading Company (shipping ticket, R. 59-60; 74). Immediately after the purchase of the blankets, certain shipments were made from the lot direct from Camp Pike to various customers of plaintiff in error, both within and without the State of Arkansas, and such shipments, beginning April 22, 1922, continued through May 9, 1922 (R. 62); and other blankets were transferred from Camp Pike to Terminal Warehouse in the city of Little Rock, Pulaski County, Arkansas, beginning on April 27, 1922, and ending May 8, 1922 (R. 51-52; 63-64). The shipping ticket of the property officer at Camp Pike (R. 59-60) shows that the delivery

was completed May 8, 1922, under the contract dated April 21, 1922 (R. 74, 76). Many of the blankets were sold to merchants in Little Rock and delivery made from Terminal Warehouse (R. 4-5; 40-41; 53-55). The shipping of the blankets from Camp Pike Military Reservation and from Terminal Warehouse on behalf of Surplus Trading Company was supervised by witness Ben Sagor (R. 67, 75), who secured all his instructions and shipping directions to fill orders for blankets direct from the New York office of plaintiff in error (R. 65), since it had no office or storeroom either at Camp Pike or anywhere in Arkansas, and was not carrying on any retail or wholesale business as a merchant in said State (R. 66). With the exception of a few blankets sold by witness Sagor, personally, in Little Rock, all sales were consummated in New York City (R. 65).

When the sale of the balance of the surplus property was made to the trustee for Camp Pike Honorary Commission, the said Commission was without funds, and plaintiff in error advanced the money to pay the War Department approximately $140,000 for the balance of this property. It was agreed that Surplus Trading Company should act as selling agent and should organize and manage the selling and distribution of the surplus property for the interests of Camp Pike Honorary Commission, and was to receive the proceeds of all sales until it had been repaid in full for the money so advanced, and after this amount had been repaid, it was to receive a fractional part of the net profits (R. 34).

On April 30, 1922, there were 10,585 blankets in the Terminal Warehouse belonging to plaintiff in error, and on the next day, May 1, 1922, there were deposited there 10,650 additional blankets (R. 63-64); 11,466 blankets were shipped direct from Camp Pike to places within and outside of Arkansas, and were never stored in Terminal Warehouse (R. 62).

On May 1, 1922, counting those blankets which were actually hauled from Camp Pike to Terminal Warehouse on tax day (May 1, 1922), there were 21,235 blankets at Terminal Warehouse. On that date the balance of the blankets, 65,881, were in warehouses on Camp Pike Military

Reservation, with exception of 1,537 blankets, which even before that time, had been shipped out of that lot direct from Camp Pike to destinations other than Terminal Warehouse (R. 62).

Surplus Trading Company did not assess any of its merchandise for taxation in Pulaski County for the years 1922 or 1923; and early in June of 1922, the assessor of Pulaski County, upon information received by him (R. 47-49), for the purpose of personal property tax placed a valuation of $100,000, based upon an actual valuation of $200,000, upon "stock bought at Camp Pike, blankets, breeches, shirts, etc." (R. 42). Some time after the books of the assessor were filed with the county clerk, in the fall of 1922, an additional assessment of $35,000 for money alleged to be on deposit in a Little Rock bank was made (R. 43-45), and Surplus Trading Company, making no assessment of its personal property for 1923, the assessor of Pulaski County, upon information received in a conversation with witness W. S. Mitchell (R. 45), placed a valuation of $65,000 for the purpose of taxation upon a Little Rock bank account alleged to be owned by Surplus Trading Company.

Surplus Trading Company did not pay the taxes assessed and levied against it either for 1922 or 1923, and on June 19, 1923, the collector filed this original suit in Pulaski County Chancery Court, asking a decree for the amount of taxes, penalties and costs for the year 1922 (R. 6), and a restraining order was issued on the same date (R. 6) enjoining payment of any money by the Camp Pike Honorary Commission and various banks in the city of Little Rock to plaintiff in error, a bond being required of and filed by the collector on the same date (R. 7). Surplus Trading Company filed its original answer (R. 7) and later, on May 7, 1924, filed a petition to vacate the restraining order mentioned (R. 8-9), and obtained an order vacating this restraining order, conditioned on filing bond (R. 9-10), which bond was duly filed on May 24, 1924 (R. 10). Thereafter, on June 1[illegible], 1924, the amended and substituted complaint of the collector, upon which the actual trial of the suit took place (R. 11-20), was filed, and warning order issued to obtain jurisdiction over the nonresident Surplus Trading Company (R. 18), and praying as follows:

1. For judgment against Surplus Trading Company for $6,708.08 (R. 17) for taxes of the year 1922, which amount was further itemized in the complaint (R. 14) as taxes on merchandise of a valuation of $100,000 and upon bank account of a valuation of $35,000, and in addition, a penalty for failure to assess said property for taxation and a penalty for failure to pay said tax within the proper time, and collector's costs incurred; and

2. For an additional judgment of $3,581.64 (R. 17) for taxes of the year 1923, which amount was further itemized in the complaint (R. 14-15) as taxes upon bank account valued at $65,000, penalty for failure to assess said property for taxation, and penalty for failure to pay said taxes within the proper time, and collector's cost incurred.

By separate answer filed July 22, 1924, to the amended and substituted complaint (R. 20-24), Surplus Trading Company, after interposing the defense of not indebted, further pleaded: FIRST, that the assessment was arbitrary (R. 21); SECOND, that the assessor of Pulaski County was not authorized to assess for the year 1922 (R. 22); THIRD, that the defendant had no property in Pulaski County on May 1, 1922, which was tax day under provisions of section 4, Act 147 of 1919 (Appendix); FOURTH, that the merchandise sought to be assessed was moving in interstate commerce upon tax day aforesaid (R. 23); FIFTH, that defendant had no money whatever in bank in Pulaski County in 1922 or 1923 (R. 23); and praying that the suit be dismissed for want of equity.

The trial court, by its final decree (R. 24-26) entered June 7, 1926, found for the defendant, Surplus Trading Company, and that the preliminary injunction ought not to have been granted, and dismissed the complaint of the collector for want of equity, and on motion of Surplus Trading Company for the assessment of damages for the wrongful issue of the restraining order, granted a money judgment of $261.60 against the collector and the sureties on his bond filed to obtain the restraining order (R. 7). The decree made no specific findings of fact or law.

On trial *de novo* of this chancery suit in Supreme Court of Arkansas, it was decreed, on June 27, 1927 (R. 87), that

the decree of the trial court, in so far as the complaint applied to the taxes for the year 1923, be affirmed, with costs, but that, in so far as the complaint applied to the taxes of 1922, the decree of the trial court be reversed; "and that this cause be remanded to said chancery court, with directions to enter a decree allowing the sheriff and collector of Pulaski County to recover of the said appellee, Surplus Trading Company, the amount of taxes and penalty for the year 1922.

"It is further ordered and decreed that said appellants recover of said appellees all their costs in this court in this cause expended, and have execution thereof" (R. 87).

In the opinion (*Haynie* v. *Surplus Trading Company*, 174 Ark. 507, 509-517; 297 S. W. 822; R. 89-95) it is disclosed that the Supreme Court of Arkansas disposed of the contentions of Surplus Trading Company as follows: FIRST, that the assessment by the assessor Pulaski County, if arbitrary, was not so contended before the proper appellate body provided by law to equalize assessments; SECOND, it was held by inference that the assessor of Pulaski County was authorized to make assessments in 1922; THIRD, that the merchandise of Surplus Trading Company, although located within Camp Pike Military Reservation, was nevertheless subject to a levy of personal property taxes by the State of Arkansas and its political taxing agencies under the State law in force, to-wit, Act 147 of 1919 (Appendix), and that such authority was by implication retained by the State of Arkansas when it consented to the purchase of the lands comprising Camp Pike Military Reservation under authority of Act 180 of 1903 (174 Ark. 509-513); the FOURTH contention of Surplus Trading Company, to-wit, that the assessment was invalid because the merchandise was moving in interstate commerce (R. 23), being abandoned on appeal, was not considered by the Supreme Court of Arkansas; and as to the FIFTH contention it was held that, inasmuch as the surplus personal property, other than the blankets, had been sold by the Government to an honorary commission appointed by the Governor for the benefit of Arkansas National Guard and said property being converted into money by sale by Surplus

Trading Company, as selling agent of said commission, under contract entitling it to a fraction of the net profits as compensation, such funds were not taxable to Surplus Trading Company, for the money belonged to the commission, and was on that account the property of the State and that it did not belong to Surplus Trading Company.

It will be noted that the Supreme Court of Arkansas, both in its decree (R. 87) and in its opinion (R. 89-95), failed to segregate the portion of the tax, penalty and costs contained in the gross 1922 assessment, which pertained to an alleged bank account valued at $35,000 from the tax levied by virtue of the $100,000 valuation, placed for purpose of taxation, upon the merchandise of Surplus Trading Company, which was held to be properly taxable. Although plaintiff in error, on petition for rehearing directed to the Supreme Court of Arkansas (Fols. 159-161; R. 95), asked that at least a division of the merchandise tax of 1922 from the invalid bank account tax be made, nevertheless, the petition was overruled (R. 96), and likewise the defendant in error's request in his petition for rehearing (Fols. 162-164; R. 95) that the court reconsider its finding that the blankets were located within Camp Pike Military Reservation on tax day, was overruled (R. 95).

It is obvious that the contention now made in this court is the Third one above set forth, and is to the effect that the State of Arkansas and its subordinate taxing agencies have no power to levy and collect taxes pursuant to State laws upon personal property situated within Camp Pike Military Reservation.

SPECIFICATION OF ERRORS.

Plaintiff in error intends to urge all of those errors originally set up in its Assignment of Errors, to-wit:

I.

The Supreme Court of Arkansas erred in holding that personal property of an individual, situated on a military reservation of the United States, is subject to taxation by the State of Arkansas, it being admitted that said reser-

vation was composed entirely of land owned in fee by the United States and purchased for use as such reservation with the consent of the State of Arkansas.

II.

The said court erred in holding that Act 180 of the General Assembly of Arkansas of 1903 ceding the jurisdiction of the State of Arkansas to the United States over said lands impliedly reserved the right to the State of Arkansas to tax personal property of individuals situated thereon.

III.

Based on the erroneous conclusions in the foregoing assignments of error, the said court erred in reversing the decree of the Chancery Court of Pulaski County, Arkansas, in so far as the complaint applies to the taxes for the year 1922 (R. 97).

SUMMARY OF ARGUMENT.

I. The blankets belonging to Surplus Trading Company, which were the subject of the assessment of the personal property tax of 1922 by the assessor of Pulaski County, Arkansas, were situated on Camp Pike Military Reservation.

The Supreme Court of Arkansas decided that Act 147 of Arkansas of 1919 (Appendix) was applicable to the assessment in question (R. 92-93). May 1, 1922, being therefore tax day (Sec. 4, Act 147, 1919), the State court found that these blankets—which were also found to be the only articles of the personal property sought to be taxed that were owned by plaintiff in error (R. 93)—were situated within Camp Pike Military Reservation on said date (R. 89). Defendant in error is now precluded from contesting this finding of fact in an equity case by a State court, because of the well settled rules set forth in *Egan* v. *Hart*, 165 U. S. 188, 189. Nor is this such a question of fact as might come within the exceptions to those rules appearing in *Grayson* v. *Harris*, 267 U. S. 352, 357-8, to-wit, (1) where denial of Federal right is the result of the finding of fact;

and, (2) where the finding of fact is so commingled with the conclusion of law in respect of the Federal right as to cause it to be necessary to consider the matter of fact in order to pass upon the Federal question.

Furthermore, the most favorable interpretation of the testimony shows that more than three-fourths of the blankets were within Camp Pike Military Reservation on tax day, and less than one-fourth of the blankets were in the Terminal Warehouse in Little Rock on said date. The finding of fact in this regard in the opinion of the Supreme Court of Arkansas can be interpreted in only two ways, either that it was found that all of the blankets were within Camp Pike Military Reservation on May 1, 1922, or that such a large proportion of them was there on said date as to be determinative of the question of the validity of the assessment. The entire assessment is void where the description in the assessment roll commingles property which the assessor had jurisdiction to assess with property over which he had no such jurisdiction (Cooley on Taxation III, Sec. 1075, p. 2185), or where that part of the tax illegally assessed cannot be separated from the part legally assessed. *Santa Clara County* v. *Southern Pac. R. Co.*, 118 U. S. 394. In the case at bar the valuation of $100,000 was placed on "stock bought at Camp Pike, blankets, breeches, shirts," etc. (R. 42).

II. The lands comprising Camp Pike Military Reservation were purchased by the United States, with the consent of the State of Arkansas, under the provisions of Act 180 of the General Assembly of Arkansas of 1903.

The United States purchased the fee simple title to the lands comprising Camp Pike Military Reservation (see Agreed Statement of Facts, R. 77-78), and the Supreme Court of Arkansas definitely determined that such lands were acquired by the United States with the consent of the State of Arkansas as set forth in the Act above mentioned (R. 90).

III. Camp Pike Military Reservation, in contemplation of article 1, section 8, Clause 17 of the U. S. Constitution, is beyond the taxing jurisdiction of the State of Arkansas.

The lands comprising Camp Pike Military Reservation were purchased by the United States (R. 70) with the consent of the Legislature of the State of Arkansas (Act 180, 1903), and the purpose was for the location of a military encampment for the United States Army and the erection of various buildings deemed necessary for its use as such Federal Military Reservation (R. 77). This state of facts brings this body of land within a status described in Article I, Sec. 8, Clause 17 of the United States Constitution, that is, that Congress has power of exercising exclusive legislation in all cases whatsoever over such land. *Ft. Leavenworth R. Co.* v. *Lowe,* 114 U. S. 525; *Concessions Company* v. *Morris,* 109 Wash. 46; 186 Pac. 655. See also other cases cited in argument. The various cases cited in support of a contrary holding by the Supreme Court of Arkansas are distinguished in the argument.

IV. There is neither an express nor an implied reservation in Act 180 of the General Assembly of Arkansas of 1903 to the State of Arkansas of jurisdiction to tax property of third persons located on lands purchased by the United States in contemplation of said act.

The consent of a State to the purchase of lands by the United States cannot be qualified. When consent of the State of the purchase by the United States is given and lands are thereafter purchased for purposes mentioned in Article I, Sec. 8, Clause 17, of the U. S. Constitution, the State's jurisdiction is completely ousted. *United States* v. *Cornell,* 2 Mason 60, Fed. Cas. 14867. The jurisdiction over such lands is the same as that over the District of Columbia, which latter jurisdiction has been before this court on numerous occasions. *Gibbons* v. *District of Columbia,* 116 U. S. 404, and other cases cited in the argument.

V. The taxing by the State of Arkansas of the blankets owned by Surplus Trading Company and situated on Camp Pike Military Reservation, which reservation is outside the taxing jurisdiction of the State of Arkansas, would constitute a taking of property without due process of law. Cooley on Taxation (4th Ed.) Vol. 1, p. 222-223, and decisions of this court cited in the argument.

ARGUMENT.

I. THE BLANKETS BELONGING TO SURPLUS TRADING COMPANY, WHICH WERE THE SUBJECT OF THE ASSESSMENT OF THE PERSONAL PROPERTY TAX OF 1922 BY THE ASSESSOR OF PULASKI COUNTY, ARKANSAS, WERE SITUATED ON CAMP PIKE MILITARY RESERVATION.

The Supreme Court of Arkansas decided that the provisions of Act 147 of the Acts of 1919 (Appendix) were applicable to the assessment in question (174 Ark. 514; R. 92, 93). Section 4 of that act provides that "all property in this State shall be assessed by the duly authorized authorities according to its value on the first day of May, or average, as required by law, and the county assessor shall publish his notice of dates on or before the second Monday in April, annually, in some newspaper published in said county, and by posting notices in one or more places in each township or ward, that he will, beginning on the first Monday in May, and on a day therein named, attend at the usual voting places in said township or ward, and such other places as he may designate, for the purpose of taking a list," etc.

May 1, 1922, was therefore that date of that year which may be designated as "tax day," in so far as personal property is concerned, that is, it is that time in that year which, in the contemplation of said act, is looked upon as the significant time for determining taxability of personal property in so far as ownership and territorial location is concerned.

It will be seen that personal property was to be assessed to the person who was the owner on the first day of May, 1922, and contemplating the value of such personal property on said date and contemplating that only that personal property which was within the territorial limits of the taxing jurisdiction on that date should be considered. If the owner on the first day of May—which is the significant date for determining value—is not the person to whom the tax should be assessed, a situation would present itself

of a person being taxed upon the valuation of property as of a day when he was not the owner thereof, which is obviously not the intent of the Legislature.

Ledger records of the plaintiff in error (R. 63, 64) showing the movement of the blankets, totaling 87,116, disclose that on April 30, 1922, there were 10,585 blankets in the Terminal Warehouse, in Little Rock, Pulaski County, Arkansas, and that on the next day, being May 1, 1922, there were deposited 10,650 additional blankets. These ledger sheets also show (R. 62) that 11,466 blankets were shipped direct from Camp Pike to places within and without Arkansas, and were never stored in the Terminal Warehouse.

Therefore the testimony shows that on May 1, 1922, counting these blankets which were actually hauled from Camp Pike to Terminal Warehouse on tax day, there were 21,235 at Terminal Warehouse; and that the balance of the blankets, being 65,881, were in United States Government warehouses on the Camp Pike Military Reservation, with the exception of 1,537 blankets, which even before that time had been shipped out of that lot direct from Camp Pike to destinations other than Terminal Warehouse.

It is evident from the testimony (R. 42, 47, 48) that the assessment was made without inquiry as to the location of the blankets on May 1, 1922; but they were considered as located at Camp Pike. The valuation of $200,000 was placed upon the "stock bought at Camp Pike, blankets, breeches, shirts, etc." and one-half of this valuation taken and placed upon the assessment rolls (R. 42). There is little doubt but that the Supreme Court of Arkansas definitely found as a fact, either that all of the blankets were at Camp Pike on tax day, or that such a large proportion of the blankets were there as to warrant that court in considering the location of such part as determinative of the question of the validity of the assessment; for the opinion begins as follows:

> "The Camp Pike Military Reservation lies within the boundaries of Pulaski County, Arkansas, and the principal question presented for decision by this appeal relates to the power of the State and its subordinate

taxing agencies to levy and collect taxes pursuant to State laws upon personal property situated within said military reservation" (174 Ark. 509-510; R. 89).

The original pleadings in this suit disclose that it was the contention of plaintiff in error from the beginning that there was no property within Pulaski County subject to assessment for the year 1922 on tax day (R. 23). This contention was strongly put forth in the trial court and likewise in the Supreme Court of Arkansas, and the contention seems to have been clearly upheld by the Supreme Court of Arkansas in so far as the question of fact is concerned, to-wit, the location of the blankets. The blankets, of course, are the only articles of personal property under consideration, and the assessment, in so far as it attempted to extend to breeches or shirts or other merchandise, was erroneous.

Thus it is said: "The testimony in the case with reference to the ownership of the property is very voluminous, but we are of the opinion that the record plainly shows that the United States sold all the rest of the property belonging to it on the Camp Pike Military Reservation to an Honorary Commission appointed by the Governor of the State of Arkansas for the benefit of the Arkansas National Guard, and that said Honorary Commission appointed the Surplus Trading Company as its agent to sell said property" (174 Ark. 515, R. 93, 94).

It was strongly urged by defendant in error, on petition for rehearing directed to the Supreme Court of Arkansas, that that court should reconsider its finding in this respect. Thus it was contended: "The court erred in finding and holding that the merchandise which was the subject of the merchandise assessment, made for the year 1922, against appellee, Surplus Trading Company, was located on the Camp Pike Reservation. The undisputed proof shows the merchandise in question was located in the Terminal Warehouse in the city of Little Rock, Pulaski County, Arkansas, when the 1922 assessment was made" (Fols. 162-164, R. 95).

It was likewise argued by plaintiff in error on petition for rehearing that "this assessment was based not only

upon blankets, but also upon breeches, shirts and other merchandise, the title to which was never in appellee' (Fols. 159-161, R. 95). The plaintiff in error, in support of its contention, argued that such a gross assessment in and of itself was void, and called attention to the fact that this argument had been made by the plaintiff in error on the original appeal before the Supreme Court of Arkansas, citing Cooley on Taxation III, Sec. 1075, p. 2185, as follows:

> "The entire assessment is void where the description in the roll commingles property which the assessor had jurisdiction to assess with property over which he had no jurisdiction."

Plaintiff in error feels that in so far as this question of fact is concerned, the defendant in error is precluded from arguing that the *situs* of the merchandise which was the subject of the assessment for 1922 was not within Camp Pike Military Reservation, because, in the first place, the Supreme Court of Arkansas has decided to the contrary; and, secondly, the testimony shows that more than three-fourths of the blankets were located at Camp Pike on May 1, 1922, and such being the case, an assessment based upon those blankets, together with the blankets stored in Terminal Warehouse in the city of Little Rock, Pulaski County, Ark., with no means of separating the value of those blankets at Camp Pike from those at Little Rock, would be void *in toto.*

Thus it is said in *Santa Clara County* v. *Southern Pac. R. Co.*, 6 Sup. Ct. 1132, 118 U. S. 394, 416, 30 L. Ed. 118, affirming judgment (C. C. 1883) 18 Fed. 385:

> "The case as presented to the court below was therefore one in which the plaintiff sought judgment for the entire tax arising upon the assessment of different kinds of property as a unit—such assessment including property not legally assessable by the State Board, and the part of the tax assessed against the latter property not being separable from the other part. Upon such an issue, the law, we think, is for the defendant; an assessment of that kind is invalid, and will not support an action for the recovery of the entire tax so levied."

Finally, plaintiff in error states that defendant in error is precluded from arguing this finding of fact made by the Supreme Court of Arkansas while passing upon a chancery case, by the well-settled principle stated in the case of *Egan* v. *Hart*, 165 U. S. 188, 189, as follows:

> "The record before us contains all the testimony introduced and evidence offered in the trial court, all of which was open for consideration and passed upon by the Supreme Court of the State of Louisiana. On error, however, to a State court, this court cannot re-examine the evidence, and when the facts are found below is concluded by such finding. *Dower* v. *Richards*, 151 U. S. 658; *Bartlett* v. *Lockwood*, 160 U. S. 357; *Stanley* v. *Schwalby*, 162 U. S. 255, 278. True it is that in *Dower* v. *Richards* the court (referring to the dictum in *Republican River Bridge Co.* v. *Kansas Pac. Railway*, 92 U. S. 315, 317) treated as open for further consideration the question whether in chancery cases the power existed in this court to review the decision of State courts on both the law and the fact. We however conclude that not only the very nature of a writ of error, but also the rulings of this court from the beginning, make it clear that on error to a State court in a chancery case, as in a case at law, when the facts are found by the court below, this court is concluded by such findings. The adjudications are collected very fully in *Dower* v. *Richards*, and in the subsequent cases above referred to."

Nor was the finding of fact by the Supreme Court of Arkansas so intermingled with the conclusion of law in respect to the Federal right as to cause it to be necessary to consider the matter of fact in order to pass upon the Federal question. In other words, the effect of the finding was to establish the existence of a preliminary fact related to the Federal right only in the sense that it brought the case within the reach of the Federal law.

This principle is clearly set forth in the case of *Grayson* v. *Harris*, 267 U. S. 352, 357-8, as follows:

> "The point that the evidence fails to show that plaintiffs in error were Creek citizens presents a pure question of fact. The trial court found they were. The State Supreme Court expressly affirmed the find-

ing, and, recognizing the existence of the Federal question in the case, put its decision denying the Federal right upon an erroneous view of the law. The denial was not the result of the finding of fact, nor is that finding so intermingled with the conclusion of law in respect of the Federal right as to cause it to be necessary to consider the matter of fact in order to pass upon the Federal question. See *Ætna Life Ins. Co. et al* v. *Dunken*, 266 U. S. 389; *Truax* v. *Corrigan*, 257 U. S. 312, 324-5, and cases cited; *Nor. Pac. Ry.* v. *North Dakota*, 236 U. S. 585, 593; *Creswill* v. *Knights of Pythias*, 225 U. S. 246, 261; *Kansas City So. Ry.* v. *Albers Comm. Co.*, 223 U. S. 573, 591. The effect of the finding was to establish the existence of a preliminary fact, related to the Federal right only in the sense that it brought the case within the reach of the Federal law relied on and called for a determination of the Federal question then presented. In other words, the finding simply established a condition, not as a basis upon which to rest a decision of the question of Federal right one way or the other, but upon which that question became an issue for consideration and determination. In such case the ordinary rule applies, that the decision of the State court upon a question of fact cannot be made the subject of inquiry here. *Telluride Power Co.* v. *Rio Grande etc. Ry.*, 175 U. S. 639, 645; *Illinois* v. *Economy Power Co.*, 234 U. S. 497, 523-524; *Dower* v. *Richards*, 151 U. S. 658, 668 *et seq.*; *Crary* v. *Devlin*, 154 U. S. 619; *Egan* v. *Hart*, 165 U. S. 188, 192; *Carpenter* v. *Williams*, 9 Wall. 785, 786."

Plaintiff in error therefore feels that it is finally determined that the merchandise which was the subject of the assessment of the personal property tax of 1922 was situated within Camp Pike Military Reservation.

II. THE LANDS COMPRISING CAMP PIKE MILITARY RESERVATION WERE PURCHASED BY THE UNITED STATES, WITH THE CONSENT OF THE STATE OF ARKANSAS, UNDER THE PROVISIONS OF ACT NO. 180 OF THE GENERAL ASSEMBLY OF ARKANSAS OF 1903.

The act referred to (Acts 1903 p. 346-7) is as follows:

"An act granting the consent of the State of Ark-

ansas to the Government of the United States to purchase sites for public buildings in this State, and ceding jurisdiction to the United States over same.

"Section 1. State consents to purchase by United States of any land in this State to be used for certain purposes, and grants jurisdiction over same.

"2. State releases her right to tax such site and improvements thereon.

"3. Acts in conflict repealed, and act in effect from passage.

"Be it Enacted by the General Assembly of the State of Arkansas:

"Section 1. The State of Arkanas hereby consents to the purchase to be made or heretofore made, by the United States, of any site or ground for the erection of any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, lock, dam, fish hatcheries, or other public buildings of any kind whatever, and the jurisdiction of this State, within and over all grounds thus purchased by the United States, within the limits of this State, is hereby ceded to the United States.

"Provided, that this grant of jurisdiction shall not prevent execution of any process of this State, civil or criminal, upon any person who may be on said premises.

"Section 2. This States releases and relinquishes her right to tax any such site, grounds or real estate, and all improvements which may be thereon or thereafter erected thereon, during the time the United States shall be and remain the owner thereof.

"Section 3. All acts and parts of acts in conflict with this act are hereby repealed, and this act shall take effect and be in force on and after its passage. Approved April 29, 1903."

In the agreed statement of facts (R. 77-78) it is established that the lands within Camp Pike were purchased by the United States, same being expressed as follows (R. 77):

"1. That land in Pulaski County, State of Arkansas, to which reference is made at various times in

depositions taken in this cause as 'Camp Pike,' is a certain tract of land lying in said county and State, purchased by the United States at some time prior to the year 1922 for use as a Federal reservation, or United States Army Cantonment."

The Supreme Court of Arkansas definitely determined that the lands comprising Camp Pike Military Reservation were acquired by the United States in contemplation of the act mentioned above, as follows (174 Ark. 511; R. 90):

> "The Camp Pike Military Reservation was acquired by the United States under the provisions of an act of the Legislature of 1903. Acts of 1903, p. 346. Section 1 of the act provides that the State of Arkansas consents to the purchase to be made by the United States of any site or ground for the erection of any armory or arsenal, etc., and that the jurisdiction of the State within and over all grounds thus purchased by the United States is ceded to the United States. The section provides that the grant of jurisdiction shall not prevent execution of any process of the State, civil or criminal, upon any person who may be upon said premises. Section 2 provides that the State releases her right to tax any such site, grounds or real estate and all improvements which may be thereon and thereafter erected thereon, during the time the United States shall be and remain the owner thereof."

III. CAMP PIKE MILITARY RESERVATION, IN CONTEMPLATION OF ARTICLE I, SECTION 8, CLAUSE 17, OF THE UNITED STATES CONSTITUTION, IS BEYOND THE TAXING JURISDICTION OF THE STATE OF ARKANSAS.

The clause of the United States Constitution mentioned is as follows:

> "17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

The plaintiff in error submits that this is the principal question before this court. It was recognized by the Supreme Court of Arkansas as the principal question before it for determination, as follows (174 Ark. 509; R. 89):

> "The Camp Pike Military Reservation lies within the boundaries of Pulaski County, Arkansas, and the principal question presented for decision by this appeal relates to the power of the State and its subordinate taxing agencies to levy and collect taxes pursuant to the State laws upon personal property situated within said military reservation."

As was argued extensively in the State court, the holding of this court in the case of *Ft. Leavenworth R. Co.* v. *Lowe*, 114 U. S. 525, 5 Sup. Ct. 995, 29 L. Ed. 264, is relied upon in support of the contention that the merchandise of Surplus Trading Company situated within the boundaries of Camp Pike was not so taxable. The principle of law set forth in this leading case may best be shown by the following quotation (114 U. S. 532-3):

> "When the title is acquired by purchase by consent of the Legislatures of the States, the Federal jurisdiction is exclusive of all State authority. This follows from the declaration of the Constitution that Congress shall have 'like authority' over such places as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases whatsoever.' Broader or clearer language could not be used to exclude all other authority than that of Congress; and that no other authority can be exercised over them has been the uniform opinion of Federal and State tribunals, and of the Attorneys General.
>
> "The reservation which has usually accompanied the consent of the States that civil and criminal process of the State courts may be served in the places purchased, is not considered as interfering in any respect with the supremacy of the United States over them, but is admitted to prevent them from becoming an asylum for fugitives from justice."

It is true that the facts of that case differ materially from the facts of the case at bar; but it is a direct holding and a statement of law based upon the construction of the

portion of the Constitution in question which is applicable to the facts in this case, and, it is submitted by plaintiff in error, is controlling upon such facts. To invoke the principle of law announced in the Lowe case, *supra*, there must exist three significant facts, to-wit: First, the purchase of the lands which comprise the reservation by the United States; second, the purpose of the purchase must be "for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;" and third, the purchase for the purpose aforesaid shall be with the consent of the State Legislature.

The lands comprising the United States military reservation known as Camp Pike were purchased by the United States (R. 77) with the consent of the Legislature of the State of Arkansas (Act 180 of 1903), and the purpose of the purchase was for the location of a military encampment for the United States Army and the erection of various buildings deemed necessary for its use as a Federal military reservation, or army cantonment (R. 77).

In 1922 a revocable license was granted the State of Arkansas (R. 79-81), which, it is submitted, changes in no way the status of the lands comprising Camp Pike military reservation.

The Supreme Court of Arkansas correctly announced the contention of the plaintiff in error, when it stated as the second paragraph of its opinion the following (174 Ark. 510; R. 89):

> "Counsel for appellee seek to uphold the decree of the chancellor denying the right of the State and its subordinate agencies to levy and collect such taxes upon the authority of *Concessions Co.* v. *Morris*, 109 Wash. 46, 186 Pac. 655. In that case it was held that the Camp Lewis Military Reservation, which was donated by Pierce County to the United States by consent of the State Legislature, excepting only the right to serve criminal and civil process therein, from the exclusive control of Congress, is without the State in both a jurisdictional and territorial sense, and personal property located thereon is not taxable under the State laws."

In view of the fact that *Concessions Co.* v. *Morris, supra,* is the only case of those urged by plaintiff in error in support of its contention in the State court, which appears in the opinion, we trust that this court will indulge the plaintiff in error in commenting upon this State decision.

The facts of the case were that a corporation of the State of Washington, with its principal place of business in Seattle, King County, as an incident to its operation of a concession licensed by the United States Army authorities at Camp Lewis, within the physical territorial limits of Pierce County, State of Washington, owned certain articles of personal property within buildings located therein. The collector of Pierce County assessed this personal property for the general State and county taxes, and in a suit in equity asking an injunction against Pierce County and its officers to prevent collection of the tax and praying that the assessments be canceled of record, the judgment of the lower court in sustaining the demurrer was reversed, and it was held that the demurrer should have been overruled. The reasons on which the court based its decision were as follows: That the Legislature of the State of Washington having expressly consented by statute to the acquisition of Camp Lewis by the United States and having thereby granted exclusive jurisdiction thereof to it, the only reservation being that the State of Washington could serve civil and criminal process thereon in actions arising outside the reservation, that therefore,

> "Such property is without the State in both a jurisdictional and territorial sense, for, as we have seen by the Constitution of the United States and the act of the Legislature of this State, both the military reservation itself and the jurisdiction and legislation over it has been granted to the United States, and thereby there has been created an independent sovereignty, the territory of which is surrounded by the State of Washington, but over which the State of Washington has no jurisdiction."

Furthermore, that the presence of the statutory reservation referred to as follows:

> "Provided, that this State shall retain concurrent jurisdiction with the United States in and over all tracts so acquired or set apart as aforesaid, so far as that all civil and criminal process that may issue under the authority of this State against any person or persons charged with crimes committed, or for any cause of action or suit accruing without the bounds of any such tract, may be executed therein, in the same manner and with like effect as though this assent and cession had not been granted,"

does not modify its conclusion, inasmuch as such a provision does not make the cession of exclusive sovereignty over Camp Lewis conditional.

The opinion in this case is exhaustive, and, it is submitted, contains reasoning which, upon its facts, cannot be assailed. It was this reasoning which plaintiff in error urged the Supreme Court of Arkansas to adopt in determining this point, with the observation that it could be applied in practically all of its details to the case at bar.

As above set forth, the Arkansas statute is very similar to the Washington statute, and the further fact that the fee simple title to Camp Pike Military Reservation was purchased by the United States; and also the Arkansas statute contains a similar reservation for the service of process within the limits of Camp Pike.

Furthermore, the opinion is based primarily upon the holding of this court in the case of *Leavenworth Railroad Co.* v. *Lowe, supra,* which case, together with the related cases of *Chicago, R. I. & Pac. Ry. Co.* v. *McGlinn,* 114 U. S. 542, 5 Sup. Ct. 1005, 29 L. Ed. 270, and *Benson* v. *United States,* 146 U. S. 325, 13 Sup. Ct. 60, 36 L. Ed. 991, comprise what have come to be referred to as the *"Leavenworth Reservation Cases." Williams* v. *Arlington Hotel Co.* (C. C. A. 8th, 1927) 22 Fed. (2nd) 669, 670.

From the type of cases which the Supreme Court of Arkansas cited as authority in its opinion, and its conclusion that the right of taxation by the State of personal property of third persons extends over Camp Pike Military Reservation, plaintiff in error respectfully takes the liberty of commenting upon such cases, not for the purpose of detracting from the holdings therein, with all of which

plaintiff in error agrees as sound law upon facts as therein interpreted, but to show how readily those cases may be distinguished, and thus set forth the theory of the contention of the plaintiff in error.

Noble v. *Amoretti*, 11 Wyo. 230, 71 Pac. 879, was a case dealing exclusively with the taxability of property on an Indian reservation, which clearly differentiates it from the case at bar. It is significant that the opinion in this case does not refer to Constitution of the United States, article I, section 8, clause 17, nor cite the Lowe case, *supra*, although the latter was decided almost twenty years before. The probable reason for this omission was the fact that Indian reservations do not come within the purview of the holding in that case nor invoke the portion of the United States Constitution cited. In *Concessions Co.* v. *Morris*, *supra*, it is said (186 Pac. 663): "The rule here announced does not conflict with those cases, among which is *Page* v. *Pierce County*, 25 Wash. 6, 64 Pac. 801, which allow the taxation of property on Indian reservations, as there is no question but that such property is territorially within the confines of the State * * *."

Nikis v. *Virginia*, 131 S. E. 236, 46 A. L. R. 219. In this case it is true that the land in question in Arlington County was purchased for an approach to the Key bridge, by the United States, with the consent of the State of Virginia (131 S. E. 238), and not, as interpreted by Supreme Court of Arkansas, ceded to the Federal Government. Although, as set forth in the opinion of the State court, this case is seemingly a renunciation of the principles laid down in the Lowe case, *supra*, yet on examination it follows these principles to the letter. The court in the case, after reviewing the authorities, including the Lowe case, bases its opinion upon a distinction of the facts as follows (131 S. E. 239):

> "That a bridge is not a building has been frequently decided, and it seems hardly necessary to say that an approach to a bridge which is a public highway is not a building. In order to be accorded immunity from State taxation, the accused must not only show that the land is acquired by the United States, but also that it is for one or more of the purposes so clearly indicated in article 1, section 8, clause 17 of the Con-

stitution. We are clear in our view that he is not entitled to any such immunity."

Oscar Daniels Co. v. *City of Sault Ste. Marie,* 175 N. W. 160. The facts of this case show that the property in question was ceded to the United States with certain restrictions and was not purchased by the United States with the consent of the State. Thus it is said:

> "In the case at bar there is not, in terms, as there was in the case of the Fort Leavenworth Reservation, a cession to the United States of exclusive jurisdiction, and, as the cession was not made upon purchase by the United States and consent of the State thereto, there is no implication of a cession of exclusive jurisdiction except as the implication may be raised upon the proviso, which, however, reserves no legislative jurisdiction" (175 N. W. 164).

By its holding it upholds the ruling of the Lowe case, *supra.*

In *Ex Parte Gaines,* 56 Ark. 227, the Arkansas Supreme Court, in the first paragraph of the opinion, stated facts which invoked the holding in the Lowe case, *supra,* and cited that case as the sole authority.

> "In the act of Congress admitting Arkansas into the Union of States, there was no reservation of Federal jurisdiction over the Hot Springs Reservation, and there has been no subsequent cession of jurisdiction by the State to the United States. The property of individuals on or within the reservation has therefore always been subject to taxation by the State."

Cassels v. *Wilder,* 23 Haw. 61, was a case decided by the Supreme Court of the Territory of Hawaii on December 3, 1915, and it was there held that an automobile owned by an officer of the United States Army, who resided and kept said automobile at Schofield Barracks, a United States military reservation, in the first taxation district of the city and county of Honolulu, was not exempt from taxation by reason of its being on said reservation. By hypothesis, the holding in this case could not come within the rules of the Lowe case, *supra,* for the Territory of Hawaii has never become a State of the Union, and there

is no authority contemplated in the constitutional provision adverted to from which consent to the purchase could be obtained. All the cases cited in the opinion of *Cassels* v. *Wilder, supra,* contemplate rules applicable to a Territory, and not rules applicable to a State.

Of the twelve cases cited by the Supreme Court of Arkansas in support of its conclusion, one is *Cassels* v. *Wilder, supra,* and five more of the twelve cases appear in the opinion of *Cassels* v. *Wilder, supra,* as supporting a rule for a Territory and not a State. It is interesting to note that this opinion, after reaching its conclusion in regard to the Territory of Hawaii, continues as follows (23 Haw. 64):

> "The Solicitor General, in an elaborate and interesting opinion approved by the Attorney General, reported in Opinions of Attorneys General, Vol. 26, pp. 91-99, has followed the rule heretofore mentioned, and held that property upon the Subig Bay Naval Reservation was not exclusively within the jurisdiction of the Navy Department of the United States, and is subject to taxation by the civil authorities."

On examination of this opinion of the Solicitor General, which is admittedly the authority for the holding in *Cassels* v. *Wilder, supra,* we find the following clear-cut statement of the undoubted law (pp. 93-94):

> "In regard to a military reservation in a State, it is settled that no other legislative power than that of Congress can be exercised over lands purchased by the United States, with the consent of the State, for the public purposes enumerated in the Constitution (Art. 1, Sec. 8, Clause 17). But where exclusive jurisdiction is not reserved before the admission of the State, or ceded afterwards, the legislative power of the State will be as full and complete as over any other place within her limits, except that the Federal instrumentalities are exempt from State control. The ordinary municipal laws of the State continue in force on the reservation, unless inconsistent with the laws of the United States, or until changed by Congress. (*Ft. Leavenworth R. R. Co.* v. *Lowe,* 114 U. S. 525; *Chicago, R. I. & Pac. Ry. Co.* v. *McGlinn, id.* 542, and cases cited; 7 Op. 571, *ut supra*).

> "In a Territory, this precise constitutional question affecting a State does not arise; the authority of Congress is altogether paramount. Yet it has been held not only that the laws of the United States apply to military reservations, but that 'a territorial statute is operative upon a military reservation within the Territory, so long as it does not conflict with the laws of the United States, or with the military administration and legitimate operations of the Government.' "

For the same reason the holding in *Thomas* v. *Gay*, 160 U. S. 264, is not in point, for the power of the Oklahoma Territory to tax property of persons other than Indians on the Indian reservations was there considered. Obviously, there could be no consent to any purchase, if one could be said to be possible, by any State, for there was no State.

The same may be said of *Wagoner* v. *Evans*, 170 U. S. 588, and *Foster* v. *Pryor*, 189 U. S. 325. The case of *Catholic Missions* v. *Missoula County*, 200 U. S. 118, deals with an Indian reservation and its status in so far as taxability is concerned, and the opinion clearly eliminates any discussion of the constitutional provision construed in the Lowe case, *supra*.

In *Rice* v. *Hammond*, 19 Okla, 419, 91 Pac. 698, 14 Ann. Cas. 963, cited by the Supreme Court of Arkansas as the basis for its opinion, it is said:

> "A military reservation in a Territory is no more under the legislative control of Congress than is an Indian reservation; and it has been expressly held by the Supreme Court of the United States that the Territory may tax property on an Indian reservation, even though it is not located within an organized county, but only attached to an organized county for judicial purposes" (91 Pac. 699).

Plaintiff in error does not argue against the principle of law as stated, but, on the contrary, argues that it bears out the principles of the Lowe case, for which statement the latter case is cited as an authority in the opinion.

In the case of *County of Cherry* v. *Thacher*, 49 N. W. 351, the status of Fort Niobrara in Nebraska was under consideration, and in holding that property on that reservation was taxable, it was said:

"In *Painter* v. *Ives*, 4 Neb. 122, it was held, in 1875, 'that the Federal courts have no jurisdiction of the crime of larceny, alleged to have been committed on an Indian reservation in this State. All territory within the boundaries of the State was withdrawn from the jurisdiction of the Federal courts by the act admitting the State into the Union.'" (49 N. W. 352).

Thus it is seen that this was not property purchased by the United States with the consent of the State.

In *Cosier* v. *McMillan*, 56 Pac. 965, the status of Fort Peck Indian Reservation in Montana was settled at the beginning of the opinion by the explanation that on the admission of Montana into the Union the people of the State disclaimed any right or title to the lands owned by the Indian tribes. Obviously, there was no question of purchase by the United States of lands with the consent of the State for the specified purposes of the constitutional provision.

There is a statement of the Supreme Court of Arkansas in its opinion to the effect that the reasoning of the court in the case of the *Concessions Co.* v. *Morris, supra*, "is contrary to the trend of the decisions of the United States Supreme Court bearing on the question, as well as to the weight of authority in the State courts" (174 Ark. 510; R. 89).

It is respectfully submitted that, so far as the research of counsel can determine, there exists no case which, upon clear facts, departs from the holding in the Concessions Company case, to-wit, that the right to tax personal property by virtue of its *situs*, as fixed by its physical location, is a proper legislative function, and where legislative jurisdiction has been ceded to the Federal Government it follows as the logical conclusion that the State's power of taxation within the district is wholly nullified. It would even seem that it is not necessary to go to the extent of holding, as was done in the Concessions Company case, that the district ceased to be within the territorial limits of the State for all purposes and absolutely.

The holding in the Concessions Company case is the logical conclusion from the premise of the principles set

forth in the Lowe case. It is undoubted that the principles of the Lowe case constitute the present law in this field.

Of course, cases where all the requirements of the provisions of the United States Constitution under consideration are met, and where there is also the question of taxability, as in the case at bar, would necessarily be limited in number. Although not involving matters of taxability, nevertheless we direct attention to the following recent cases, in both State and Federal courts, holdings in which are based upon the holding in the Lowe cases:

Battle v. *United States* (1908), 209 U. S. 36, 37, 28 Sup. Ct. 422, 52 L. Ed. 670.

Western Union Telegraph Co. v. *Chiles* (1909), 214 U. S. 274, 278, 29 Sup. Ct. 613, 53 L. Ed. 994.

Williams v. *Arlington Hotel Co.* (C. C. A. 8th Cir. Oct. 17, 1927) 22 Fed. (2d) 669.

United States v. *Watkins* (D. C. Cal. Oct. 18, 1927) 22 Fed. (2d) 437.

Pothier v. *Rodman* (C. C. A. 1st Cir. 1923) 291 Fed. 311.

United States v. *Wurtzbarger* (Dist. Ct. Ore. 1921), 276 Fed. 754.

Webb v. *J. G. White Engineering Corp'n.* (1920) 204 Ala. 429; 85 So. 729.

Fant v. *Arlington Hotel Co.* (1926), 170 Ark. 440, 280 S. W. 20.

Lowe v. *Lowe* (1926), 150 Md. 592; 133 Atl. 729.

Arlington Hotel Co. v. *Fant* (Ark. March 12, 1928; not yet reported).

IV. THERE IS NEITHER AN EXPRESS NOR AN IMPLIED RESERVATION IN ACT 180 OF THE GENERAL ASSEMBLY OF ARKANSAS OF 1903 TO THE STATE OF ARKANSAS OF JURISDICTION TO TAX PROPERTY OF THIRD PERSONS LOCATED ON LANDS PURCHASED BY THE

UNITED STATES IN CONTEMPLATION OF SAID ACT.

A reason given by the Supreme Court of Arkansas for its holding that the State had jurisdiction to tax personal property of third persons situated within Camp Pike Military Reservation is the construction given to section 2 of the act above mentioned, which section is as follows:

> "This State releases and relinquishes her right to tax any such site, ground or real estate and all improvements which may be thereon or thereafter erected thereon during the time the United States shall be and remain the owner thereof."

It was said by the Supreme Court of Arkansas in its opinion that by the terms of this section of this act, the State of Arkansas qualified its grant of "jurisdiction of this State within and over all grounds thus purchased by the United States" (Sec. 1, Act 180, 1903). Of course, the plaintiff in error earnestly insists that this construction is not a proper one. Plaintiff in error goes further and contends that no such qualification of a cession of jurisdiction is possible, where the facts of the case invoke the provisions of Article 1, Section 8, Clause 17 of the United States Constitution.

It is said in the Lowe case, *supra* (114 U. S. 534), in quoting with approval the opinion of Mr. Justice Story in *United States* v. *Cornell*, 2 Mason 60, Fed. Cas. 14867, as follows:

> "For it may well be doubted whether Congress is, by the terms of the Constitution, at liberty to purchase lands for forts, dockyards, etc., with the consent of the State Legislature, where such consent is so qualified that it will not justify the exclusive legislation of Congress there. It may well be doubted if such consent be not utterly void. *Ut res magis valeat quam pereat*, we are bound to give the present act a different construction if it may reasonably be done; and we have not the least hesitation in declaring that the true interpretation of the present proviso leaves the sole and exclusive jurisdiction of Fort Adams in the United States."

Or, as it was stated in *Steele* v. *Halligan* (Dist. Ct. Wash. 1916), 229 Fed. 1011, 1016, after quoting from the Lowe case, *supra*:

"The State's jurisdiction is completely ousted. *U. S.* v. *Cornell*, Fed. Cas. No. 14867."

It was further said in the opinion of *United States* v. *Cornell, supra* (25 Fed. Cas. p. 648), as follows:

> "The Constitution of the United States declares that Congress shall have power to exercise 'exclusive legislation' in all 'cases whatsoever' over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings. When therefore a purchase of land for any of these purposes is made by the National Government, and the State Legislature has given its consent to the purchase, the land so purchased by the very terms of the Constitution *ipso facto* falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted. This is the necessary result, for exclusive jurisdiction is the attendant upon exclusive legislation; and the consent of the State Legislature is by the very terms of the Constitution, by which all the States are bound, and to which all are parties, a virtual surrender and cession of its sovereignty over the place. Nor is there anything novel in this construction. It is under the like terms in the same clause of the Constitution that exclusive jurisdiction is now exercised by Congress in the District of Columbia; for if exclusive jurisdiction and exclusive legislation do not import the same thing, the States could not cede or the United States accept for the purposes enumerated in this clause, any exclusive jurisdiction. And such was manifestly the avowed intention of those wise and great men who framed the Constitution."

The jurisdiction of the United States over Camp Pike Military Reservation in so far as taxability is concerned is the same as that exercised over the District of Columbia, by virtue of the terms of Article 1, Section 8, Clause 17 of the United States Constitution. The extent of the Federal jurisdiction over the District has been before this court on numerous occasions.

It was said in the case of *Gibbons* v. *District of Columbia*, 116 U. S. 404, 407, in referring to the case of *Loughborough* v. *Blake*, 5 Wheat. 317, as follows:

"The point there decided was that the act of Congress laying a direct tax through the United States in proportion to the census directed to be taken by the Constitution might comprehend the District of Columbia, and the power of Congress, legislating as a local Legislature for the District, to levy taxes for District purposes only, in like manner as the Legislature of a State may tax the people of a State for State purposes, was expressly admitted, and has never since been doubted."

See also, *Kendall* v. *U. S.*, 12 Pet. 619.

Mattingly v. *District of Columbia*, 97 U. S. 687.

Shoemaker v. *United States*, 147 U. S. 282, 300.

Parsons v. *District of Columbia*, 170 U. S. 53.

The status of Hot Springs Reservation, situated territorially within Garland County, Arkansas, has recently been considered by both State and Federal courts.

Williams v. *Arlington Hotel Co., supra*, reversing 15 Fed. (2d) 412.

Fant v. *Arlington Hotel Co., supra.*

In *Williams* v. *Arlington Hotel Co., supra*, an action was brought for personal property consumed in the burning of the Arlington Hotel of Hot Springs, Arkansas, located on the Hot Springs Reservation, while the plaintiff was a guest thereof.

This reservation was public land at all times, and was reserved by the United States for its own purposes. At the time the State of Arkansas was admitted into the Union, the United States made no reservation of any political control or jurisdiction. In 1903 the State passed an act expressly ceding control and jurisdiction over this reservation to the United States, reserving only the rights to serve State process therein and to tax private property, and this cession was expressly accepted by Act of Congress. At the time of this cession and acceptance, the law of Arkansas as to the liability of innkeepers for the property of guests within a hotel was analogous to that of an insurer. In 1913 a State law was enacted changing such liability, so

that innkeepers should respond only where the fire causing the loss was either intentionally or negligently started by the innkeeper or his employees. The action was based upon the law existing prior to the act of 1913; and the Circuit Court of Appeals reversed the judgment of the District Court, and held that the laws of the State in existence at the time of the cession continue upon the reservation, where not inconsistent with the laws of the United States, or where not abrogated by Congress after the cession.

It will be noted that the opinion expressly holds that the facts do not bring the case within the provisions of Article 1, Section 8, Clause 17 of the U. S. Constitution, the holding being based upon *C. R. I. & P. R. Co.* v. *McGlinn*, *supra*.

It will be noted further that in 1903 an act of cession was passed by the State of Arkansas (Acts Ark. 1903 p. 52). That act provides that exclusive jurisdiction over a described portion of Hot Springs Reservation "is hereby ceded and granted to the United States of America, to be exercised so long as the same shall remain the property of the United States; provided that this grant of jurisdiction shall not prevent the execution of any process of the State, civil or criminal, on any person who may be on such reservation or premises; provided, further, that the right to tax all structures and other property in private ownership on the Hot Springs Reservation accorded the State by the Act of Congress approved March 3, 1901, is hereby reserved to the State of Arkansas."

There is no question but that the State of Arkansas had the power to impose the foregoing conditions upon the grant of jurisdiction, under the facts as set forth.

At the same session of the Legislature there was passed Act 180, which is under consideration in the case at bar; and it is significant that in Act 180 there is no condition or reservation imposed, save that for the execution of civil or criminal process, which is a usual provision in acts of this sort, as held in the Lowe case.

It was said by the Supreme Court of Arkansas, in construing Act 180 of 1903 (174 Ark. 511, 512):

"Thus it will be seen that by the terms of the act itself it was not intended by the State to part with

jurisdiction for the purpose of listing personal property of third persons in the reservation for assessment and taxation. The grant by the State expressly cedes its right to tax the land and buildings granted to the United States, and this of itself indicates an intention to reserve jurisdiction for taxation over the property of third persons located on such reservation. The United States accepted the grant upon the terms indicated, and, by its acceptance, acknowledged that there was no occasion for the State to cede exclusive jurisdiction to the United States or to exempt from State taxation the property of third persons situated upon the reservation, which was not used by the United States as a public agency or instrumentality for carrying out the purpose of the grant" (R. 90-91).

It is earnestly submitted that this is an erroneous construction of the act of Arkansas in contemplation of the principles of law announced in the Lowe case.

V. THE TAXING BY THE STATE OF ARKANSAS OF THE BLANKETS OWNED BY SURPLUS TRADING COMPANY AND SITUATED ON CAMP PIKE MILITARY RESERVATION, WHICH RESERVATION IS OUTSIDE THE TAXING JURISDICTION OF THE STATE OF ARKANSAS, WOULD CONSTITUTE A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW.

"It is the theory of our system of government that the State and the Nation alike are to exercise their powers respectively in as full and ample a manner as the proper departments of government shall determine to be needful and just, and as might be done by any other sovereignty whatsoever. This theory by necessary implication wholly excludes any interference by either the State or the Nation with an independent exercise by the other of its constitutional powers. If it were otherwise, neither government would be supreme within what has been set apart for its exclusive sphere, but on the other hand would be liable at any time to be crippled, embarrassed, and perhaps wholly obstructed in its operations, at the will or caprice of those who, for the time being, wielded the authority of the other. And that an exercise of the power to tax might have that effect is manifest from a consideration of the nature of the power." Cooley on Taxation (4th Ed.) Vol. 1, p. 236-237.

"It is firmly established that, consistently with the due process clause of the Constitution of the United States, the State cannot tax property located or existing permanently beyond its limits."

Cooley on Taxation (4th Ed.) Vol. 1, p. 222-3, quoting from *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1.

See also:

Alpha Portland Cement Co. v. *Commonwealth of Massachusetts*, 268 U. S. 203.

Rhode Island Hospital Trust Co. v. *Doughton*, 270 U. S. 69.

Wachovia Bank & Trust Co. v. *Doughton*, 272 U. S. 567.

CONCLUSION.

It is respectfully submitted that the Supreme Court of Arkansas erred in its holding that the personal property of Surplus Trading Company, plaintiff in error—which personal property had its *situs* fixed by its physical location on Camp Pike Military Reservation, said reservation being composed of lands purchased by the United States with the consent of the State of Arkansas, and for a purpose contemplated by Art. 1, Sec. 8, Cl. 17 of the United States Constitution—was subject to taxation by the State of Arkansas and its subordinate taxing agencies.

It is therefore prayed that, because of such erroneous conclusions by the Supreme Court of Arkansas, its judgment reversing the decree of the Chancery Court of Pulaski County, Arkansas, in so far as the complaint applies to the taxes for the year 1922, be itself reversed.

Respectfully submitted,

G. B. Rose,
D. H. Cantrell,
J. F. Loughborough,
A. W. Dobyns,
A. F. House,
Solicitors for Surplus Trading Company, Plaintiff in Error.

APPENDIX.

Act 147.

AN ACT to provide for the assessment and valuation of the taxable property of the State of Arkansas and for other purposes.

Section:

1. Provides for township board of assessment and valuation.
2. County judge to file names of members of boards.
3. Arkansas Tax Commission shall prepare and furnish blanks, records, etc.
4. Fixes time for assessment; provides for publication of notices.
5. Duty of boards of assessors.
6. Manner of listing property owned by nonresidents.
7. Delinquent assessments; penalty.
8. Delinquent personal property; how assessed.
9. Compensation of township members of the board of assessment and valuation.
10. Property owners to take oath to correctness of list.
11. Persons aggrieved may appeal to county court.
12. Assessors to call annual meeting of the members of the board of assesment and valuation.
13. Assessor required to file biennial report of his assessment of real estate.
14. Assessor required to make annual report to Arkansas Tax Commission.
15. Compensation of assessors.
16. Manner of listing property erroneously left off of tax rolls.
17. Penalty for failure to comply with provisions of this act.

18. Repeals Acts 234 of 1917 and 124 of 1913 and all laws in conflict. Emergency declared; effective after passage.

Be It Enacted by the General Assembly of the State of Arkansas:

Section 1. On or before April 1st of each year, the county judge of each county in this State shall appoint two reputable and intelligent property owners of each township in the county, and in each ward of cities of the first class, who shall have been residents of said township or ward for a period not less than three years prior to said appointment, who, together with the county tax assessor, shall be known as the township board of assessment and valuation for said township or ward. The assessor or his deputy shall administer the same oath to each member of said board as subscribed to by him, before any work shall be done by them. When any member of said board shall fail to appear for service for any cause, the assessor or his deputy shall appoint property owners who shall take the oath herein provided, and perform the duties and receive compensation provided for the members of said boards.

Section 2. Each county judge shall, on or before the 1st day of April, file in duplicate with the county clerk, the names and postoffice address of the members of said board appointed by him; and the county clerk shall retain the original for the files of his office and forward the copy to the Arkansas Tax Commission, on or before the second day of April each year.

Section 3. The Arkansas Tax Commission shall prepare and furnish, at the proper time, to the county clerks in this State, copies for all lists, blanks and records to be used in the assessment, extension and collection of taxes in each county of this State, and the county clerks shall have all such lists, blanks and record books made at the expense of the county (provided, this shall not apply to poll tax receipts); and no lists, blanks or record books shall be used by any official in the assessment, extension or collection of taxes, except as herein provided. The clerk shall, on or before April 30th of each year, furnish to the assessor all blanks and records necessary for the assessment of per-

sonal property; and at the same time, each odd numbered year, shall furnish all blanks and records necessary for the assessment of real estate, prepared in such form as may be directed by the Tax Commission; and abstracted by the clerk as provided in section 7010 of Kirby's Digest of the Laws of Arkansas, unless otherwise directed by the Arkansas Tax Commission.

Section 4. All property in this State shall be assessed by the duly authorized authorities according to its value, on the first day of May or average as required by law, and the county assessor shall publish his notice of dates on or before the second Monday in April, annually, in some newspaper published in said county, and by posting notices in one or more places in each township or ward, that he will, beginning on the first Monday in May, and on a day therein named, attend at the usual voting places in said township or ward, and such other places as he may designate, for the purpose of taking a list of the real and personal property of each resident of said township or ward; also, the per capita tax and postoffice address of such as are liable to pay said tax, and said assessor shall remain in each township or ward at least one day, and one day extra for each seventy-five voters if he deems necessary. Upon application by the property owner, the assessors shall furnish appropriate printed blanks upon which to list and report the property owned by such party subject to taxation.

Section 5. Each board shall, during the time advertised for said township, list and value all real estate situated in said township; and shall list and value all personal property presented to the board by the owner, his agent or by lists furnished by the owner or his agent, properly verified. Each owner of personal or real property in any township in this State shall be required to list their property to be valued for taxation with the board of such township during the time said board is sitting; each property owner shall be required to answer upon oath all questions propounded to him by said board, and to furnish proof demanded as to purchases, sales, transfers, improvements, accounts, notes, stocks, bonds, bank notes, bank deposits, marginal and exchange profits, invoices, insurance carried, or any other information requested by said board.

Section 6. If the owner of property is a nonresident of the township, unavoidably absent from the county, or physically unable to attend the meeting of the board in his township, he may have his property listed by agent; and if the owner has no agent, he may furnish a verified list to each township board wherein the property is situated, by filing the same with the county assessor on or before the day advertised for the assessment of property in said township, who shall submit same to the board to be valued. If any resident of any township who owns land in said township, shall own adjoining land in adjoining townships to that of his home township, he may assess all of said land before the board of the township of his residence.

Section 7. There shall be a penalty of 25 per cent of all taxes due on each list of personal property delinquent in assessment; and if personal property owned by any person shall not be listed for taxation, as above indicates, it shall be delinquent and must be so designated by said board; and the assessor shall so designate same on his records that the clerk may know each list of personal property so delinquent; and it shall be the duty of said clerk to affix a penalty of 25 per cent of all taxes due on said respective items and extend same in the total amount of taxes due to be known by the collector of taxes as now provided by law; provided, the minimum penalty shall be $1, and where penalty of 25 per cent of the amount of taxes due on any list shall amount to less than $1 it shall be arbitrarily placed at $1 by said clerk.

Section 8. There shall be no property unassessed in any township when the board adjourns except that part of personal property where no one appeared in person, by agent, or furnished a list, as herein directed; and it shall be the duty of the two members of the township board of assessment and valuation to visit the place of residence or business of each delinquent, if necessary, and from all information obtainable, list and value their property, and either of the members shall be empowered to swear the delinquent to his list, with the same effect as if done by the assessor, and shall designate the penalty on said list; and such delinquent assessment shall be delivered to the county assessor, duly signed by one or both of the members of said

board, not later than fifteen days after the adjournment of the board for said township; and the two township members of the board may secure such assistance. at their own expense, as they deem necessary to complete the work.

Section 9. The two township members of the board of assessment and valuation for each township shall receive $3 per day for their services on said board, as advertised for their township, to be paid by the county, upon certificate of the assessor; and shall receive 50 cents for each delinquent assessment, when collected by the collector of taxes, to be paid by the collector, upon certificate of the assessor, for which the collector shall receive credit in his settlement, and the balance shall go to the general revenue fund of the county; provided nothing shall be paid for any delinquent assessment where the collector of taxes is unable to collect same, but the collector shall be required to give the two members of the township board a list of those he has been unable to collect, and if desired, he shall give either or both full authority to collect such delinquents, at least ten days before the first Monday in July of each year, that they may protect their interest, who shall report to the collector on or before the first Monday in July of each year such amounts as they have collected.

Section 10. Before any person shall list his property for taxation, the assessor, or one of the members of said board, shall administer to said person the following oath, to-wit: "You do solemnly swear, or affirm, that you will render a true and complete list of all the property subject to taxation, either tangible or intangible, in or out of the State, that you are required to list in your own name or right, or that of any other person or owner for whom you may be required by law to list for taxation; and that you will make true and perfect answers to any and all questions that may be demanded of you with reference to the amount, kind, quality and value of such property, and any other inquiry by which the true amount, kind and value of such property may be ascertained, so help you God."

Section 11. Any person who shall be aggrieved by the action of the board of assessment and valuation, in valuing their property, may appeal to the county court; provided, to take such appeal, the owner shall file petition and affidavit

of appeal with the county clerk, for which $1 shall be paid as cost to the clerk, who shall summon the members of the board of such township, immediately, and issue such process as said board or the county judge may request for witnesses and evidences of value and amount of property; provided, all appeals must be filed on or before the 25th day of September of each year and shall have preference over all matters in said court, and shall be heard and order made on or before the third Monday in October; provided, no reduction shall be allowed except on evidence corroborative of that of the owner. The clerk shall mail statement to the Tax Commission on or before the third Monday in October each year, showing amount of deduction allowed by the court on appeals.

Section 12. It shall be the duty of the assessor of each county in this State to call a meeting at the county seat of the members of the board from each township or ward wherein the home office of any corporation is located has made report to him for the purpose of assessment of intangible value, at some time between August 10th and August 20th of each year, for the purpose of submitting to each board the corporation statements from their respective township or ward, to be assessed for taxation as required by law. The members of the board shall receive pay for their services the same as at regular meeting of their township board as advertised by the assessor's annual notice.

Section 13. The assessor shall, on or before the first day of September in each odd-numbered year, file his report of assessment of real estate with the county clerk in books of the kind and character furnished to him by the county clerk for the purpose of assessing such real estate; provided, the clerk shall furnish such book with the real estate abstracted as directed in section 7010 of Kirby's Digest of the Laws of Arkansas, unless otherwise directed by the Tax Commission; provided the assessor shall total his record as to number of acres of land taxed and value thereof, number of town and city lots and value thereof: The assessor shall, on or before the second Monday in September of each year, file his report of assessment of personal property with the county clerk in the record book to be used by the

county clerk for the extension of taxes, and shall show each item by totals in number and value; provided, the clerk shall not receive said reports unless they are in a neat and legible manner.

Section 14. The assessor shall, on or before the third Monday in September of each year, report to the Arkansas Tax Commission, by total of items and value, the total assessment of said county made by the township board and the Tax Commission on blanks furnished by the commission, and in the manner as directed by said commission, as to kind, character, number and value of all property assessed for taxation in said county, both tangible and intangible, and such other information as the commission may demand of such assessor.

Section 15. The assessor shall receive the following compensation for his services: One hundred dollars ($100) for the assessment of acreage lands and improvements thereon, and fifty dollars ($50) for the assessment of city and town lots with improvements therein, and twenty cents ($0.20) per list for each name listed for per capita tax or personal property, and all personal property, both tangible and intangible, belonging to one individual, company or corporation in a township, to be counted as one list or name: One-fourth of the entire compensation of each clerk for making the original taxbooks shall be paid by the State and three-fourths by the county; and the county court shall examine and approve each such account, if correct, and make an order showing the amount due by the State and county respectively by items, and directing the clerk to draw his warrants on the county treasury for the amount due by the county, and forward to the State Auditor a copy of said order for payment of the amount due by the State, and the Auditor shall submit such claim to the Tax Commission for approval, and if approved, shall draw his warrant on the State treasury for said amount: Provided, no payment shall be made to any assessor for any delinquent assessment until same shall have been collected by the collector of taxes for said county; provided, this act shall not repeal or amend any act naming a salary for any county officer, except as to amount to be paid by county and State.

Section 16. All omitted property of any character, tangible or intangible, that has been left off the taxrolls for any cause, shall be listed by the clerk, who shall notify the tax assessor of the listing of said property and it shall be his duty to appear at the office of the clerk at once, and place a value on said property and designate same as delinquent; the Tax Commission shall have authority to order the clerk to place any property on the record for taxation that may have been omitted, with such value as it may advise: It shall be the duty of each officer, or person, in every county in this State, to advise the Tax Commission of any property known to them that may have been omitted from the tax rolls for any cause, and all such property shall be valued by the Tax Commission and certified to the county clerk as delinquent, and the clerk shall place such property on the assessment record, as delinquent, and extend the taxes thereon.

Section 17. Any tax commissioner, state officer, county officer or member of any township board of assessment and valuation in this State, who shall fail or refuse to comply with the provisions of this act, unless prevented by sickness or unavoidable casualty, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for each separate act in violation hereof; and it shall be the duty of each prosecuting attorney in this State to submit all information regarding such violation that may come to him from any source to the grand jury of the county in which such violation occurred, for their investigation and action.

Section 18. That Act 234 of the Acts of 1917 and Act 124 of the Acts of 1913, and all other laws in conflict herewith, are hereby repealed, and this act, being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage.

Approved March 1, 1919. (Ark. Laws, 1919, 132-141).

FILE COPY

OCT 6 1928

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

SURPLUS TRADING COMPANY ..... *Plaintiff in Error,*

v. No. 2

J. M. HAYNES, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS ..... *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF OPPOSING MOTION OF DEFENDANT IN ERROR TO DISMISS WRIT OF ERROR

G. B. ROSE,
D. H. CANTRELL,
J. F. LOUGHBOROUGH,
A. W. DOBYNS,
A. F. HOUSE,
Solicitors for Plaintiff in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

SURPLUS TRADING COMPANY, *Plaintiff in Error,*

v. No. 33.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF OPPOSING MOTION OF DEFENDANT IN ERROR TO DISMISS WRIT OF ERROR

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR

Plaintiff in Error submits that the decree of the Supreme Court of Arkansas (R. 87, 95) to which the Writ of Error herein is directed, is a *final* decree, and a proper one to invoke the jurisdiction of this court by Writ of Error.

I. SIGNIFICANT PORTION OF DECREE OF SUPREME COURT OF ARKANSAS.

"It is further ordered and decreed that the decree of said chancery court in this cause rendered, in so far as the complaint applies to the taxes of the year

1922, be, and the same is hereby, for the error aforesaid, reversed, annulled and set aside with costs, and that this cause be remanded to said chancery court with directions to enter a decree allowing the sheriff and collector of Pulaski County to recover of the said appellee, Surplus Trading Company, the amount of taxes and penalty for the year 1922" (R. 87).

II. SIGNIFICANT PORTION OF OPINION OF SUPREME COURT OF ARKANSAS.

"The result of our views is that the chancellor should have held the assessment for the year 1923 to be illegal and void and properly restrained the sheriff from collecting any amount of taxes from the Surplus Trading Company under it. The chancery court, however, erred in holding that the sheriff and collector was not entitled to recover the taxes for the year 1922 and the penalties provided by the statute as indicated in the opinion.

"Therefore, the decree will be reversed and the cause will be remanded with directions to allow the sheriff and collector to recover against the Surplus Trading Company the amount of taxes and penalties for the year 1922. It is so ordered" (R. 95).

III. SIGNIFICANT PORTIONS OF AMENDED COMPLAINT.

"That the Assessor of Taxes for Pulaski County, Arkansas, under and by virtue of the laws of the State of Arkansas, assessed, for the purpose of taxation for the year 1922, all personal property owned by the defendant, Surplus Trading Company, and situated within the State of Arkansas, and particularly within the county of Pulaski in said State, in the amount and sum of one hundred thirty-five thousand ($135,000) dollars.

"That there was due on the 10th day of April, 1923, as taxes on said property the sum of four thousand six hundred seventy-three and 26/100 ($4,673.26) dollars, for the year 1922.

"That the said sum of four thousand six hundred seventy-three and 26/100 ($4,673.26) dollars, having remained past due and unpaid on and after the 10th

day of April, 1923, there is now due, in addition to the said sum, the following sums:

"First. Due as penalty for failure to assess said property for the purpose of taxation, the sum of eight hundred sixty-five and 25/100 ($865.25) dollars.

"Second. Due for failure to pay said tax on said property on or before the 10th day of April, 1923, the sum of eleven hundred sixty-eight and 32/100 ($1,168.32) dollars.

"Third. Due as collector's costs for failure to pay said taxes on said property on or before the 10th day of April, 1923, one and 25/100 ($1.25) dollars.

"That there now remains past due and unpaid as taxes, penalties and costs for the year 1922 upon the property of the Surplus Trading Company the sum of six thousand seven hundred eight and 8/100 ($6,708.08) dollars" (R.14). * * * * * * * * * * *

"Wherefore, plaintiff asks * * * that the State of Arkansas and her various political subdivisions have judgment against the defendant, Surplus Trading Company, in the amount and sum of six thousand seven hundred eight and 8/100 ($6,708.08) dollars, for taxes, penalties and costs for the year 1922" (R. 17). *

"DEMAND

"Demand is hereby made on you, and each of you individually, collectively and as members of and composing the Camp Pike Honorary Commission and the Camp Pike Disposals Board, that you forthwith pay to me, as sheriff and collector of Pulaski County, Arkansas, the amount of taxes, penalties and costs, due me as such collector of Pulaski County, Arkansas, for the year 1922, due and payable by the Surplus Trading Company; said amount of taxes, penalties and costs being as follows:

Amount of taxes	$4,673.26
Penalty for non-assessment	865.25
Penalty for non-payment	1,168.32
Costs	1.25
"Total amount due	$6,708.08

"Dated this 26th day of May, 1923."

(Exhibit C to amended complaint. R. 18-19).

IV. AUTHORITIES AND ARGUMENT.

The only ruling cited by Defendant in Error, in support of his prayer for dismissal of the Writ of Error herein, is *Schlosser* v. *Hemphill,* 198 U. S. 173. In that case the Iowa Supreme Court reversed the decree of the trial court and remanded "for further proceedings in harmony with the opinion of this court" (198 U. S. 175). This court properly held that the decree was not final because "no decree was entered in the Supreme Court, and no specific instruction was given to the court below" (198 U. S. 176).

That the Iowa Supreme Court contemplated further proceedings is unmistakably shown. In the case at bar, a far different situation presents itself, because the controversy is terminated, and there is no intimation of further proceedings, and simply the direction "to enter a decree allowing the sheriff and collector of Pulaski County to recover of the said appellee, Surplus Trading Company, the amount of taxes and penalty for the year 1922."

The decree refers to the complaint evidently for the purpose of designating the portion of the decree of the lower court to be reversed, and the liquidated amount of the decree directed to be entered.

The holding in *Schlosser* v. *Hemphill, supra,* was bottomed on *Haseltine's case* (*Haseltine* v. *Central Bank of Springfield, Mo.* (*No.* 1) 183 U. S. 130) and in the latter case the first paragraph of the opinion is as follows:

> "The motion to dismiss must be granted. We have frequently held that a judgment reversing that of the court below, and remanding the case for further proceedings, is not one to which a writ of error will lie. The case of *Mower* v. *Fletcher,* 114 U. S. 127, is not in point, as the judgment of the Supreme Court of the State remanded that case to the inferior court with an order to enter a specified judgment, nothing being left to the judicial discretion of the court below. A like ruling was made in *Atherton* v. *Fowler,* 91 U. S. 143, and *Commissioners of Tippecanoe County* v. *Lucas,* 93 U. S. 108" (183 U. S. 131).

The opinion of this court in *Haseltine's case, supra,* clearly distinguishes *Mower* v. *Fletcher,* 114 U. S. 127. Plaintiff in error takes the liberty of quoting in full the short opinion in the last mentioned case as its affirmative argument in opposition to the motion before the court.

"Mr. Chief Justice Waite delivered the opinion of the court.

"These motions are made on the ground that the judgments for the review of which the writs of error were sued out are not final judgments. The judgment in each case is that the judgment of the State District Court 'be, and the same is hereby, reversed, with costs, with directions to the Superior Court of Los Angeles County to enter judgment upon the findings for the plaintiff as prayed for in his complaint.'

"That judgment is final for the purposes of a writ of error to this court, which terminates the litigation between the parties on the merits of the case, so that, if there should be an affirmance here, the court below would have nothing to do but to execute the judgment it had already rendered. *Bostwick* v. *Brinkerhoff*, 106 U. S. 3, and the numerous cases there cited. The judgments in these cases are of that character. The litigation is ended, and the rights of the parties on the merits have been fully determined. Nothing remains to be done but to require the inferior court to perform the ministerial act of entering the judgments in that court which have been ordered. This is but carrying the judgment of the Supreme Court which has been rendered into execution. Nothing is left to the judicial discretion of the court below. The cases relied on in support of the motions to dismiss were all judgments or decrees of reversal, with leave for further proceedings in the inferior court. Such judgments are not final, because something yet remains to be done to complete the litigation.

"The motion in each of the cases is overruled."

See also *Rio Grande Railway Co.* v. *Stringham*, 239 U. S. 44, 47, and *North Carolina Railroad Company* v. *Story*, 268 U. S. 288, 291.

CONCLUSION

It is respectfully submitted that the Motion to Dismiss is without merit, and should be overruled.

G. B. Rose,
D. H. Cantrell,
J. F. Loughborough,
A. W. Dobyns,
A. F. House,
Solicitors for Surplus Trading Co., Plaintiff in Error.

FILE COPY

OCT 16 1928

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

SURPLUS TRADING COMPANY ..... *Plaintiff in Error,*

v. No. 2

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY ARKANSAS ..... *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF OPPOSING MOTION OF DEFENDANT IN ERROR TO AMEND RECORD

G. B. ROSE,
D. H. CANTRELL,
J. F. LOUGHBOROUGH,
A. W. DOBYNS,
A. F. HOUSE,
Solicitors for Plaintiff in Error.

PARKIN PTG. & LITH. CO., LITTLE ROCK

IN THE

Supreme Court of the United States

SURPLUS TRADING COMPANY.....*Plaintiff in Error,*

v. No. 33.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY ARKANSAS.....*Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF OPPOSING MOTION OF DEFENDANT IN ERROR TO AMEND RECORD

BRIEF

Plaintiff in error submits that the agreed statement of facts constituting a part of the record in this cause (R. 77-86) speaks the truth; that it cannot be amended in this court; and that further proof should not be taken in this cause.

I.

The primary prayer for relief in the pending motion is for "an order amending the agreed statement of facts set forth in the record herein to speak the truth as to the manner in which the United States acquired title to the land in question." This is merely an effort to introduce

evidence in this court to change the record on which the case was tried and decided by the State courts. Nothing out of the record certified to this court can be taken into consideration.

Home for Incurables v. *City of New York*, 187 U. S. 155.

Telluride Power Transmission Co. v. *Rio Grande Ry. Co.*, 175 U. S. 639.

Goodenough Horseshoe Mfg. Co. v. *Rhode Island Horseshoe Co.*, 154 U. S. 635.

Spies v. *Illinois*, 123 U. S. 131, 182.

II.

In this motion, counsel for defendant in error, speaking entirely outside the record, have made erroneous statements and insinuations regarding the facts surrounding the preparation of the agreed statement of facts in question. For the information of the court, and for the purpose of rebutting what is apparently an attempt to reflect upon counsel for plaintiff in error, the liberty is taken of presenting the following particulars, which likewise are not found in the record.

The agreed statement of facts was entered into with J. C. Marshall, Esq., as chief counsel of record representing plaintiff in the State trial court. An identical agreed statement of facts was entered into at the same time, with the same attorney, in connection with another litigation wherein Mr. Marshall was also chief counsel for the plaintiff in the trial court. (See *Adkins* v. *Kalter*, 171 Ark. 1111).

Mr. Marshall was a stockholder in Army Post Development Company, as appears from the certificate of the Pulaski County Clerk (Appendix). He died October 27, 1926, after the trial of this suit in the trial court.

The purpose of the agreed statement of facts was to obviate the necessity of taking extended proof regarding the status of the land composing Camp Pike Military Reservation. War Department records were not examined,

nor was any representation made to the effect that they were. Access was not permitted to such records according to the Adjutant General's Department in Washington, except by following the provisions of "Compilation of office Memoranda A. G. O. 1-2-24," dealing with record information for use in legal controversies, pages 63-71, inclusive.

The lands in fee simple comprising Camp Pike Military Reservation were acquired by four methods, to-wit:

(1) Where cash was paid by the United States to individual landowners. About 2,800 acres were obtained in this manner.

(2) Where condemnation proceedings were instituted in Federal Court and cash paid by the United States into the registry of the court for the individual landowners, whose lands were condemned. About 250 acres were acquired in this manner.

(3) Where condemnation proceedings were instituted in Federal Court and cash paid by Army Post Development Company into the registry of the court for the individual landowners whose lands were condemned. About 100 acres were acquired in this manner.

(4) Where lands were conveyed by warranty deed by Army Post Development Company, the United States making no cash payment therefor. (See deed in printed motion of defendant in error as Exhibit 1 in the Appendix thereto).

There can be no question but that these different methods of acquisition of land constitute *purchases* within the meaning of that word as it appears in U. S. Constitution, Article 1, Section 8, par. 17, and as same appears in Act 180 of the General Assembly of Arkansas of 1903 (Appendix).

We infer that the argument of defendant in error is that unless money was paid by the United States there could be no *purchase*. This is untenable. It is established

that the acquisition of title by condemnation proceedings is included within the term *purchase*.

Ft. Leavenworth Railroad Co. v. *Lowe*, 114 U. S. 525.

United States v. *Beaty*, 198 Fed. 284.

United States v. *Whipple Hardware Co.*, 191 Fed. 945.

The fact that Army Post Development Company made payment of the money necessary to obtain the vesting of title does not affect the above holding. "The proper view of the right of eminent domain seems to be that it is a right belonging to a sovereignty to take private property for its own public uses, and not for those of another."

Kohl v. *United States*, 91 U. S. 367, 373.

The word *purchase* in the United State Constitution and in the Arkansas statute is used in its more extended legal meaning, as including every mode of acquiring title to real estate other than by descent.

"Purchase, in its enlarged and legal signification, means the acquisition of real property by any voluntary act of the parties as distinguished from title by descent, which result from the operation of the law." *Chicago & E. I. R. Co.* v. *Doyle*, 256 Ill 514.

See also:

McMahon v. *School District No. 66 of Antelope County*, 80 Neb. 156.

Semi-Tropic Spiritualists' Ass'n v. *Johnson*, 163 Calif. 639.

Bailey v. *Henry*, 125 Tenn. 390.

Bartlett v. *City of Lowell*, 201 Mass. 151.

The deed which appears in the Appendix to defendant in error's motion contains the nominal consideration of $1, which is enough to pass fee simple title to the United States. *Jenkins* v. *Pye*, 12 Pet. 241. However, the consideration for a deed of land may be something other than money; and in regard to the conveyance in question it

may well be said that in return for the same the United States took possession of and improved the lands, which was the benefit and consideration desired by Army Post Development Company.

Roberts v. *Northern Pacific Railroad Co.*, 158 U. S. 1.

Little Rock Chamber of Commerce v. *Pulaski County*, 113 Ark. 443.

III.

This cause appears in the published reports as *Haynie* v. *Surplus Trading Company*, 174 Ark. 507. Proceedings were instituted in the State trial court on July 19, 1923, the agreed statement of facts being made a part of the record therein on June 4, 1925, and a decree entered June 7, 1926 (R. 26). On appeal to the State appellate court, there was a decree on June 27, 1927 (R. 87), same becoming final on September 26, 1927 (R. 96) when petitions for rehearing filed by both appellant and appellee in that court were severally overruled. The filing date of the record in this court is December 27, 1927, and the plaintiff in error filed its brief in April, 1928. On September 19, 1928, printed copy of Motion to Dismiss and Brief in support thereof was sered on plaintiff in error and the Opposition Brief was served on counsel for defendant in error on October 3, 1928. On October 6, 1928, printed copy of this Motion to Amend the Record was served upon counsel for plain tiff in error. It would seem that the delay in filing this motion constitutes a valid ground for its denial, as a matter of discretion, by this court. *Sandford and Brooks* v. *U. S.*, 267 U. S. 455, 457.

CONCLUSION

It is respectfully submitted that the pending motion is without merit and should be overruled.

G. B. Rose,
D. H. Cantrell,
J. F. Loughborough,
A. W. Dobyns,
A. F. House,
Solicitors for Surplus Trading Co.

APPENDIX

CERTIFCATE

State of Arkansas,
County of Pulaski.

I, W. S. Rogers, Clerk of the County Court of Pulaski County, Arkansas, do hereby certify that all articles of incorporation, and corporation annual reports located in Pulaski County, Arkansas, are filed and recorded in my office.

That Record Book W, pages 77 to 85, referred to in the annual report filed by the Army Post Development Company on the 9th day of June, 1922, shows a list of stockholders, and among other stockholders in said list appears the name of J. C. Marshall, as being a subscriber to one share of the capital stock of the Army Post Development Company, said name appearing at page 81 in the Record Book aforesaid.

Given under my hand and seal of said court on this 8th day of October, 1928.

W. S. Rogers, Clerk,

(Seal) By (signed) Fred Adair D. C.

ACT 180

"An act granting the consent of the State of Arkansas to the Government of the United States to purchase sites for public buildings in this State, and ceding jurisdiction to the United States over same.

"Section 1. State consents to purchase by United States of any land in this State to be used for certain purposes, and grants jurisdiction over same.

"2. State releases her right to tax such site and improvements thereon.

"3. Acts in conflict repealed, and act in effect from passage.

"Be it Enacted by the General Assembly of the State of Arkansas:

"Section 1. The State of Arkansas hereby consents to the purchase to be made or heretofore made, by the United States, of any site or ground for the erection of any armory, arsenal, fort, fortification, navy yard, custom-house, lighthouse, lock, dam, fish hatcheries, or other public buildings of any kind whatever, and the jurisdiction of this State, within and over all grounds thus purchased by the United States, within the limits of this State, is hereby ceded to the United States.

"Provided, that this grant of jurisdiction shall not prevent execution of any process of this State, civil or criminal, upon any person who may be on said premises.

"Section 2. This State releases and relinquishes her right to tax any such site, grounds or real estate, and all improvements which may be thereon or thereafter erected thereon, during the time the United States shall be and remain the owner thereof.

"Section 3. All acts and parts of acts in conflict with this act are hereby repealed, and this act shall take effect and be in force on and after its passage. Approved April 29, 1903" (Acts Ark. 1903, p. 346-7).

FILE COPY

Office Supreme Court, U.
FILED
SEP 25 1928
ELMORE CRO
CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927

No. [redacted] : 2 : -

SURPLUS TRADING COMPANY ..... *Plaintiff in Error*

v.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS ..... *Defendant in Error*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

MOTION OF DEFENDANT IN ERROR TO DISMISS WRIT OF ERROR, AND BRIEF IN SUPPORT

H. W. APPLEGATE,
Attorney General of Arkansas
SAM T. POE,
TOM POE,
For Defendant in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927

No. 666.

SURPLUS TRADING COMPANY.....*Plaintiff in Error*

v.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS.....*Defendant in Error*

MOTION OF DEFENDANT IN ERROR TO DISMISS WRIT OF ERROR.

Comes now the defendant in error in the above entitled cause, by his counsel of record, and moves that the writ of error herein be dismissed.

H. W. APPLEGATE,
Attorney General of Arkansas;

SAM T. POE,

TOM POE,
For Defendant in Error.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR IN SUPPORT OF MOTION TO DISMISS.

Defendant in error insists the motion to dismiss the writ of error should be sustained because the action of the Supreme Court of Arkansas, to which the writ of error is directed, is not a final decree.

The decree of the Supreme Court of Arkansas in this action is not a final decree. Defendant in error earnestly insists the Supreme Court of the United States is, therefore, without jurisdiction to review it.

This action was originally filed in the Chancery Court of Pulaski County, Arkansas, on July 19, 1923. (R. 6.) The Chancery Court of Pulaski County, Arkansas, decided it adversely to the predecessor in office of the defendant in error on June 7, 1926. From the decree of the trial court the predecessor in office of the defendant in error prayed an appeal to the Supreme Court of Arkansas, which was granted. (R. 24, 25, 26.) The Supreme Court of Arkansas on June 27, 1927, reversed the decree of the Chancery Court of Pulaski County, Arkansas, and remanded the cause to the trial court with directions to allow the defendant in error to recover against plaintiff in error the amount of tax based upon the assessment for the year 1922, with statutory penalties. (R. 87.)

Petitions for rehearing were filed in the Supreme Court of Arkansas on behalf of the plaintiff in error and the defendant in error. (R. 95.)

On September 26, 1927, the petitions for rehearing were denied by the Supreme Court of Arkansas. (R. 96.)

Plaintiff in error made application for a writ of error to the Supreme Court of the United States on October 11, 1927, and the application was, on that date, granted by the Chief Justice of the Supreme Court of Arkansas. (R. 98, 99.)

Subsequently plaintiff in error lodged the record in the Supreme Court of the United States on December 27, 1927, without awaiting the entry of a decree by the Chancery Court of Pulaski County, Arkansas, as provided for in the decree of the Supreme Court of Arkansas.

The decree of the Supreme Court of Arkansas, reads as follows:

> "This cause came on to be heard upon the transcript of the record of the Chancery Court of Pulaski County, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in so much of the proceedings and decree of said Chancery Court as dismisses the complaint of the appellant insofar as the same applied to the taxes of the year 1923; but that as to the taxes of the year of 1922, the holding of the Chancery Court is erroneous and should be reversed.
>
> "It is therefore ordered and decreed by the Court that the decree of said Chancery Court in this cause rendered be, and the same is hereby, insofar as the complaint applied to the taxes for the year 1923, affirmed with costs.
>
> "It is further ordered and decreed that the decree of said Chancery Court in this cause rendered, insofar as the complaint applied to the taxes of the year 1922, be, and the same is hereby, for the error aforesaid, reversed, annulled (fol. 147) and set aside with costs, and that this cause be remanded to said Chancery Court with directions to enter a decree allowing the sheriff and collector of Pulaski County to recover of said appellee, Surplus Trading Company, the amount of taxes and penalty for the year 1922.
>
> "It is further ordered and decreed that said appellants recover of said appellees all their costs in this Court in this cause expended and have execution thereof." (R. 87.)

The decree of the Supreme Court of Arkansas to which the writ of error granted to plaintiff in error runs provides for the reversal of the part of the decree of the Chancery Court of Pulaski County, Arkansas, insofar as the same applies to the taxes for the year 1922. It also specifically an-

nulled and set aside such part of the decree of the trial court as applied to taxes for 1922 and remanded the cause to the Pulaski Chancery Court with directions to enter a decree allowing defendant in error to recover of plaintiff in error the taxes for the year 1922, with statutory penalties.

It is conceded no decree has been entered by the Chancery Court of Pulaski County, Arkansas, since the reversal of this action by the decree of the Supreme Court of Arkansas. The decree of the Supreme Court of the State of Arkansas set aside and annulled the decree of the Chancery Court of Pulaski County, Arkansas. Hence, there is no decree—final or otherwise—to which the writ of error granted plaintiff in error may run.

The Supreme Court of Arkansas has repeatedly held when a case triable *de novo* is remanded to the court below for the entry of a decree, the parties may be permitted to introduce material evidence discovered since the original trial, and may amend the pleadings for the purpose of setting up matters materially affecting the merits, subsequently arising.

Collins v. Paepcke-Leicht Lumber Co., 82 Ark., 1, 100 S. W., 86.

Chicago Mill & Lumber Co. v. Osceola Land Co., 94 Ark., 183, 126 S. W., 380.

It is an elemental proposition that the Supreme Court of the United States is without jurisdiction to review the action of the State court of last resort when the action of that court is not in the nature of a final decree or judgment.

A case with strikingly similar facts where the Supreme Court of the United States held it was without jurisdiction on a writ of error to review the decree of the highest state because the decree was not final is that of *Schlosser v. Hemphill*, 198 U. S., 173. Defendant in error insists the facts of the present case bring it within the rule declared in *Schlosser v. Hemphill, supra.*

CONCLUSION

It is, therefore, respectfully urged that the motion to dismiss should be sustained and the writ of error herein should be dismissed.

H. W. APPLEGATE,
Attorney General of Arkansas

SAM T. POE,

TOM POE,
For Defendant in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

No. 33.

SURPLUS TRADING COMPANY.....*Plaintiff in Error*

v.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS.....*Defendant in Error*

MOTION OF DEFENDANT IN ERROR TO AMEND RECORD.

The defendant in error, by his counsel of record, moves the Court for an order amending the agreed statement of facts set forth in the record herein to speak the truth as to the manner in which the United States acquired title to the land in question here, or, in the alternative, to permit further proof to be taken to establish the true facts as to this question, and for reasons therefor states:

I.

The sole question presented by the assignment of errors herein challenges the power of the State of Arkansas to tax personal property of plaintiff in error and claimed by it to have been located within the boundaries of the United States military reservation at Camp Pike, Arkansas, when assessed for taxation. It is argued by plaintiff in error the

property was exempt from taxation by reason of its location. The principal contention of plaintiff in error is that the military reservation at Camp Pike, Arkansas, is without the taxing jurisdiction of the State of Arkansas. This contention is based upon the claim that the land comprising the military reservation at Camp Pike, Arkansas, was acquired by the United States by purchase with the consent of the State of Arkansas, and, therefore, it is argued that by the provisions of subdivision 17, of Article I, Section 8, of the Constitution of the United States, the Camp Pike military reservation is under the exclusive legislative jurisdiction of Congress and without the taxing jurisdiction of the State of Arkansas.

II.

While this cause was pending in the State courts an agreed statement of facts was entered into by and between counsel of record for both parties litigant. (R. 77, 86.) In entering into the stipulation as to the manner in which the lands comprising the Camp Pike military reservation were acquired by the United States it was the intention of the parties to agree only upon the true facts as they actually existed. Counsel for plaintiff in error drafted the stipulation and represented to counsel for defendant in error that the facts set forth therein were true. The agreed statement of facts, among other things, recites fee simple title to the land in the military reservation known as Camp Pike was pruchased by the United States for use as a Federal reservation, or United States Army cantonment. (R. 77, 78.) The agreed statement of facts was prepared by counsel of record for plaintiff in error, who, before and at the time of the execution thereof by counsel of record for defendant in error, represented to counsel of record for defendant in error that the stipulation recited the true facts as to the manner in which the United States acquired title to the land in question

here. Before and at the time of the execution of the agreed statement of facts counsel of record for plaintiff in error also represented to counsel of record for defendant in error they had made a thorough investigation of the facts as to the manner in which the United States acquired title to the lands in question; that the investigation so made included a careful examination of the records of the War Department of the United States, as well as all other available records, and all the records established the fact the United States had purchased the fee simple title to the land in question. Relying upon the statements of counsel of record for plaintiff in error as being true, counsel of record for defendant in error executed the agreed statement of facts as set forth in the printed record herein. (Tr. 77, 78.)

III.

The land in question here, on which the warehouses and buildings were erected and in which the merchandise of plaintiff in error was located, was not purchased by the United States, as recited by the agreed statement of facts, but was donated to the United States. This will be shown by certified copy of deed conveying the land donated to the United States and by affidavit of W. S. Holt. Certified copy of the deed is attached hereto, marked Exhibit No. 1, and made part hereof; and affidavit of W. S. Holt is also hereto attached, marked Exhibit No. 5, and made part hereof.

The land was donated to the United States by Army Post Development Company, an Arkansas corporation. This corporation was organized for the specific purpose of acquiring the land in question and donating it to the United States as an inducement to secure the location of an army cantonment at or near Little Rock, Pulaski County, Arkansas. This will be shown by certified copy of a report filed by Army Post Development Company with the County Clerk of Pulaski County,

Arkansas, the official with whom domestic corporations are, under the laws of Arkansas, required to file reports showing, among other things, the purposes for which incorporated; and by affidavit of W. S. Holt. Certified copy of annual report of Army Post Development Company, filed with the County Clerk of Pulaski County, Arkansas, on 9th of June, 1922, is hereto attached, marked Exhibit No. 2, and made part hereof; and affidavit of W. S. Holt is also hereto attached, marked Exhibit No. 5, and made part hereof.

Army Post Development Company purchased the land from the owners when able to agree on a price to be paid. Where an agreement could not be reached as to the price to be paid the United States exercised the right of eminent domain and instituted condemnation proceedings in the United States District Court for the Western Division of the Eastern District of Arkansas. Army Post Development Company furnished the money required to pay for the lands condemned, as will be shown by certified copies of the judgment and registry record of the United States District Court for the Western Division of the Eastern District of Arkansas in such condemnation proceedings, hereto attached, marked Exhibit No. 3, and made part hereof; and will also be shown by affidavit of W. S. Holt, hereto attached, marked Exhibit No. 5, and made part hereof.

The law firm of which counsel of record for plaintiff in error are members was a stockholder in Army Post Development Company, as will be shown by certificate of the County Clerk of Pulaski County, Arkansas, hereto attached, marked Exhibit No. 4, and made part hereof.

IV.

The United States acquired a few tracts of land included in the Camp Pike military reservation by purchase after the land in question was acquired by donation. However, all of the land

within the Camp Pike military reservation upon which the buildings and warehouses were erected and in which buildings and warehouses the merchandise in question was located, was donated to the United States. This will be shown by affidavit of W. S. Holt, attached hereto, marked Exhibit No. 5, and made part hereof.

V.

Defendant in error and his counsel of record did not know the true facts as to the manner in which the United States acquired the land in question until after the record was filed in the Supreme Court of the United States. Counsel of record for defendant in error, when advised of the true facts, prepared a stipulation amending the record filed in this cause to speak the truth, but counsel of record for plaintiff in error declined to sign it.

Premises considered, defendant in error prays an order amending the agreed statement of facts set forth in the record herein to speak the truth as to the manner in which the United States acquired title to the land in question, or, in the alternative, to permit further proof to be taken to establish the true facts on such issue.

H. W. APPLEGATE,
Attorney General of Arkansas.

SAM T. POE,
TOM POE,
For Defendant in Error.

State of Arkansas,
County of Pulaski.

We, Sam T. Poe and Tom Poe, counsel for defendant in error in the above entitled cause, do solemnly swear that the facts recited in the foregoing "Motion to Amend Record" are true; except such facts as are alleged upon information and belief, and, as to those facts, that we believe them to be true.

SAM T. POE,

TOM POE.

Sworn to and subscribed before me this 4th day of October, 1928.

GRACE LASSITER,
Notary Public, State of Arkansas.

(Seal)

APPENDIX.

EXHIBIT No. 1.

10774.

ARMY POST DEVELOPMENT CO. TO UNITED STATES OF AMERICA. WARRANTY DEED.

KNOW ALL MEN BY THESE PRESENTS: That the Army Post Development Company, a corporation organized under and by virtue of the laws of the State of Arkansas, by its president and secretary, duly authorized thereto by proper resolution of its board of directors, dated June 5, 1919, for the consideration of the sum of One Dollar ($1.00), cash in hand paid to it by the UNITED STATES OF AMERICA, the receipt of which is hereby acknowledged, does grant, bargain and sell unto the said UNITED STATES OF AMERICA and unto its grantees and assigns forever, the following described land, situated in the County of Pulaski, State of Arkansas, to-wit: The southwest quarter (Sw. ¼) of section two (2); the west half of the northwest quarter (W. ½ Nw. ¼) of section two (2); all that part of the northeast quarter of the northwest quarter (Ne. ¼ Nw. ¼) of section two (2) that lies west of the Little Rock and Batesville Pike, except a certain tract of land lying in the northeast corner of the said northeast quarter of the northwest quarter of section two (2), more particularly described as follows: Beginning at the center of the Little Rock and Batesville Pike where it enters said forty-acre tract at or near the northeast corner, thence west along the section line 209½ feet to a culvert, thence in a southerly direction 33 feet to a small maple tree, thence in a southeasterly direction 198½ feet to the center of the Little Rock and Batesville Pike at a certain culvert and at a point 122½ feet south of the point of beginning, thence in a northeasterly direction along the center of the Little Rock and Batesville Pike 122½ feet to the point of beginning, being the same land described in a deed dated February 9, 1916, from Ellen Hardcastle to

the trustees of the Antioch Church of the Pentecostal Church of the Nazarene, recorded in Book 122, page 112, of the records of Pulaski County, being Thirty and 75-100 (30.75) acres; also Two (2) acres off the southeast quarter of the northwest quarter (Se. ¼ Nw. ¼) of section two (2), described as follows: Beginning at the northwest corner of the southeast quarter of the northwest quarter of said section 2, run east on the north line of said southeast quarter of the northwest quarter, 918 feet to the center of the Little Rock and Batesville Pike, thence south 95 feet, thence west parallel with the north line 918 feet to the west line of said southeast quarter of the northwest quarter, thence north 95 feet to the point of beginning. Part of the southeast quarter of the northwest quarter (Se. ¼ Nw. ¼) of section 2, beginning on and at the southwest corner of said southeast quarter of the northwest quarter, running thence north six and 50-100 (6.50) chains, thence north 89½ degrees east to the county road, thence south 9 degrees west along the county road six and 59-100 (6.59) chains, thence south 89½ degrees west ten and 9-100 (10.09) chains to the place of beginning, containing Six and 92-100 (6.92) acres, as shown by plat recorded with deed in Deed Record Book No. 70, page 371, of the deed records of Pulaski County; the northeast quarter (Ne. ¼) of section three (3); the west half of the southeast quarter (W. ½ Se. ¼) of section three (3); the northeast quarter of the southeast quarter (Ne. ¼ Se. ¼) of section three (3); the north half of the southeast quarter of the southeast quarter (N. ½ Se. ¼ Se. ¼) of section three (3); the west half of the southwest quarter (W. ½ Sw. ¼) of section three (3); the northwest quarter of the northwest quarter (Nw. ¼ Nw. ¼) of section three (3); the south half of the northeast quarter (S. ½ Ne. ¼) of section four (4); the northwest quarter of the northeast quarter (Nw. ¼ Ne. ¼) of section four (4); the northwest quarter (Nw. ¼) of section four (4); the south half (S. ½) of section four (4); all of section five (5), except lot one (1) and a strip 33 links wide off the north side of lot four (4), in a subdivision of the east half of the northwest quarter (E. ½ Nw. ¼) of said section 5, deeded to J. H. Love by deed dated June 15, 1908, recorded in Book 95, page 329, of the records of Pulaski

County, and also except a part of lot two (2) in the said subdivision of the east half of the northwest quarter of section 5, beginning at the northeast corner of said lot 2 and run 210 feet south, thence 210 feet west, thence 210 feet north, thence 210 feet east to the point of beginning, deeded to School District No. 8 of Pulaski County, Arkansas, by deed dated August 22, 1916, recorded in Book 124, page 467, of the records of Pulaski County; the north half of the northeast quarter (N. ½ Ne. ¼) of section eight (8); the southeast quarter of the northeast quarter (se. ¼ Ne. ¼) of section eight (8); the north half (N. ½) of section nine (9); the northwest quarter (Nw. ¼) of section ten (10); all that part of the southeast quarter (Se. ¼) of section nine (9) and the southwest quarter (Sw. ¼) of section ten (10) that lies north of a line described as follows: Commence at the northwest corner of the southeast quarter of section 8 and run thence in a southeasterly direction to the northwest corner of the south half of the northeast quarter of the southeast quarter of section 9, run thence from said point in a southeasterly direction to a point on the north and south center line of section 10, 330 feet south of the northeast corner of the southeast quarter of the southwest quarter of section 10; all of the above dscribed land being in Township Two (2) North, Range Twelve (12) west.

Also the south half of the south half of the southeast quarter (S. ½ S. ½ Se. ¼) of section thirty-four (34); the south half of the southwest quarter of the southwest quarter (S. ½ Sw. ¼ Sw. ¼) of section thirty-five (35), Township Three (3) North, Range Twelve (12) West.

Also a right-of-way through the south half of the northeast quarter of the southeast quarter (S. ½ Ne. ¼ Se. ¼) of section nine (9), and through the south half of the southeast quarter (S. ½ Se. ¼) of section nine (9), Township Two (2) North, Range Twelve (12) West, 100 feet in width extending 50 feet on each side of the center line of the road as now constructed, extending from South Boulevard in a southerly direction through the land in said section nine (9).

To have and to hold the same unto the said UNITED STATES OF AMERICA and unto its grantees and assigns forever, with all appurtenances thereunto belonging.

And it hereby covenants with the said UNITED STATES OF AMERICA and unto its grantees and assigns forever, with all appurtenances thereunto belonging.

And it hereby covenants with the said United States of America that it will forever warrant and defend the title to said lands against all lawful claims whatever.

IN TESTIMONY WHEREOF, The name of the grantor is hereunto affixed by its President, and its seal affixed by its Secretary, this 6th day of June, 1919.

ARMY POST DEVELOPMENT COMPANY,
By Ed Cornish, President.

(Corporate Seal)

Attest: Edward B. Downie, Secretary.

State of Arkansas,
County of Pulaski. ss.

On this 9th day of July, 1919, before me, W. S. Holt, a notary public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Ed Cornish and Edward B. Downie, secretary, to me personally well known, who stated that they were the president and secretary of the Army Post Development Company, a corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and in behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 9th day of July, 1919.

W. S. HOLT, Notary Public.

(Seal)

My commission expires June 18, 1922.

Filed for record July 28, 1919, at 3:08 o'clock P. M., and recorded July 29, 1919.

J. E. CHRISP, Clerk.
By Will Dorough, D. C.

State of Arkansas,
County of Pulaski. ss.

I, O. L. McNair, Clerk of the Circuit Court and ex-Officio Recorder, within and for the County and State aforesaid, do hereby certify that the foregoing is a true, correct and compared copy of a WARRANTY DEED filed for record in this office on the 28th day of July, 1919, at 3:09 P. M., from ARMY POST DEVELOPMENT COMPANY TO UNITED STATES OF AMERICA, numbered 10774, recorded in DEED BOOK 92, at pages 636 and 637.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal as such Clerk on this 4th day of October, 1928.

O. L. McNAIR, Clerk.
By C. H. Baker, D. C.

(Seal)

EXHIBIT No. 2.

CORPORATION'S ANNUAL REPORT.

We, the undersigned, Ed Cornish, President, and Edward B. Downie, Secretary, of the Army Post Development Company, address Little Rock, Ark., a corporation duly established under the laws of the State of Arkansas, and in compliance with said laws, do hereby make their report, showing the condition of affairs of said corporation, as nearly as the same can be ascertained on the first day of April, 1922, next preceding the date hereof:

Amount of capital actually paid in	$290,188.90
Cash value of its real estate	Nil
Cash value of its personal estate	
Cash value of its credits	4,447.41
Amount of its debts	Nil

Name of each shareholder, number of shares, name of each stockholder, number of shares, see list enumerated in Book W, pages 77 to 85, inclusive; 123,607 shares.

Capital stock paid in	$291,088.90	
Unpaid subscriptions	17,928.60	
		$309,017.50

Army Post Development Company not an active, going concern organized for purpose of acquiring land and donating same to United States Government as an incentive to bringing Camp Pike to Little Rock. What few funds are on hand are held for future contingencies in winding up the affairs of the company.

Witness our hands and seals this 8th day of June, 1922.

(Signed) ED CORNISH, President.
EDW. B. DOWNIE,
Secretary.

Sworn to before J. L. Collins, N. P., June 9th, 1922.

AFFIDAVIT.

State of Arkansas, }
County of Pulaski, } ss.

We, the undersigned, president and secretary of said corporation, each being duly sworn, state on oath that the

matters and things set out in the foregoing report are true and correct to the best of our knowledge and belief.

(Signed) ED CORNISH, President.
EDW. B. DOWNIE,
Secretary.

Subscribed and sworn to before me this 9th day of June, 1922.

J. L. COLLINS,
Notary Public.

By R. B. BRODIE, Clerk.
By WM. COUNTZ, D. C.

CERTIFICATE OF RECORD.

State of Arkansas, ss.
County of Pulaski,

I, R. B. Brodie, Clerk of the County and Probate Court, within and for the County and State aforesaid, do hereby certify that the foregoing report was filed for record in my office on the 9th day of June, 1922, and that the same is now duly recorded on Page—, Record of Corporate Companies, Vol. Z, Pulaski County, Arkansas.

Witness my hand and seal of said court this 9th day of June, 1922.

R. B. BRODIE, County Clerk,
WM. COUNTZ, Deputy Clerk.

CERTIFICATE OF AUTHENTICATION.

State of Arkansas, ss.
County of Pulaski,

I, W. S. Rogers, Clerk of the County and Probate Courts, within and for the County and State aforesaid, DO HEREBY CERTIFY that the foregoing Z, page 132, of written matter contains a true, complete and perfect transcript of the Corporation Annual Report of the Army Post Development Company of Pulaski County, Arkansas, as therein set forth, and as the same appears on file and of record in Record Book ...., Volume Z, Page 132, Pulaski County, State of Arkansas.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said courts at the City of Little Rock, Arkansas, this 4th day of October, A. D. 1928.

(Signed) W. S. ROGERS,
County and Probate Clerk.

State of Arkansas,
County of Pulaski, ss.

I, C. P. Newton, Judge of the County and Probate Courts, within and for the County and State aforesaid, DO HEREBY CERTIFY that W. S. Rogers, Esq., whose name is subscribed to the foregoing certificate, is the Clerk of the County and Probate Courts, duly elected, commissioned, qualified and acting, and under our laws the legal custodian of the records of said courts, and that he is the proper officer to make said certificate, and that said certificate is in due form of law and that his acts as such Clerk are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Judge of the County and Probate Courts at the City of Little Rock, Arkansas, this 4th day of October, A. D. 1928.

(Signed) C. P. NEWTON,
(Seal) County and Probate Judge.

State of Arkansas,
County of Pulaski. ss.

I, W. S. Rogers, Clerk of the County and Probate Courts, within and for the County and State aforesaid, DO HEREBY CERTIFY that C. P. Newton, whose name is subscribed to the foregoing certificate, is the Judge of the County and Probate Courts for Pulaski County, State of Arkansas, and that his acts as such are entitled to full faith and credit and that said certificate is in due form of law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said courts at the City of Little Rock, Arkansas, this 4th day of October, A. D. 1928.

(Signed) W. S. ROGERS,
County and Probate Clerk.

EXHIBIT No. 3.

UNITED STATES OF AMERICA, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION.

BE IT REMEMBERED, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 1st day of April, *Anno Domini*, One Thousand, Nine Hundred and Eighteen, at the United States Courtroom, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge, presiding and holding said court, the following proceedings were had, to-wit: April 8th, 1918.

United States of America
vs. 5871
George Hild and A. Allen.

Comes the plaintiff by W. H. Martin, Esq., United States Attorney, and Ashley Cockrill, Esq., special assistant to the United States Attorney, and come the defendants by J. W. House and Geo. W. Hays, Esq., their attorneys, and come the Jury, to-wit: Mink Westbrook, R. C. Vance, C. C. Aycock, J. M. Baugh, M. W. Jordan, C. J. Hornor, George Melton, and S. W. Welburn, and the trial hereof not being concluded on yesterday, the same is now resumed; and the jury having heard all the evidence and argument of counsel and having been charged and instructed by the court, retired to consult of their verdict, and afterwards returned into court the following verdict: "We, the Jury, assess the value of the premises in controversy at the sum of $1,466.00.
(Signed) R. C. VANCE, Foreman."

It is therefore considered, ordered and adjudged that the United States of America pay to the defendants, George Hild and A. Allen, the said sum of One Thousand Four Hundred Sixty-six Dollars ($1,466.00), found as aforesaid as compensation for the right to appropriate for the uses and purposes of the United States of America the S. ½ of the Se. ¼ of the Se. ¼ of section 3, Township 2 North, Range 12 West of the Fifth Principal Meridian, Pulaski County, Arkansas, the property of the defendants.

And it is hereby further considered, ordered and adjudged that upon the payment of the said sum of One Thousand, Four Hundred Sixty-six Dollars all right, title and intrest in and to the said property be vested in the said the United States of America, specially for its uses and purposes in connection with the construction, maintenance and operation of a military cantonment upon said property.

(Signed) JACOB TRIEBER, Judge.

May 10th, 1918. This judgment and costs satisfied in full.

J. W. HOUSE,
Attorney for Defendants.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS,
WESTERN DIVISION.

BE IT REMEMBERED, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 1st day of April, *Anno Domini*, One Thousand, Nine Hundred and Eighteen, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said court, the following proceedings were had, to-wit: April 9th, 1918.

United States of America
vs. 5872
R. L. Hanks, Laura Hanks, W. B. Worthen & Co., Agents; Gordon N. Peay, Trustee, and Holman Real Estate Company and Martin Lawrsen.

Comes the plaintiff by W. H. Martin, Esq., United States Attorney, and Ashley Cockrill, Esq., Special Assistant United States Attorney, and comes the defendants, R. L. Hanks, Laura Hanks and Martin Lawrsen, by Geo. W. Hays and J. W. House, Esq., their attorneys, and the defendants, W. B. Worthen & Company, agents, and Gordon N. Peay, trustee, by Jno. F. Clifford, Esq., and the defendant, Holman Real Estate Company, by Verne McMillan, Esq., its attorney, and come the jury, to-wit: A. J. Allen, O. J. Harkey, S. C. Cassell, T. J. Y. Johnson, Will Campbell, Sam T. Scott, Dan Otts, U. M. Hughes, Louis Edrington, M. O. Dowd, W. H. Poynter, and J. J. Rankin; and the trial

hereof not being concluded on yesterday, the same is now resumed; and the jury having heard all the evidence and argument of counsel and having been charged and directed by the Court, returned into Court the following verdicts: "We, the jury, find the value of the lands in controversy in this cause, belonging to R. L. Hanks, to be $1,500.00, and the damages to his crop $400.00. Total, $1,900.00.

(Signed) SAM T. SCOTT, Foreman."

We, the jury, find the value of the lands in controversy in this cause belonging to Martin Lawrsen to be $2,000.00.

(Signed) SAM T. SCOTT, Foreman.

And it appearing to the Court that W. B. Worthen & Company, agents, and Gordon N. Peay, trustee, have a lien upon the property in controversy herein for the sum of Four Hundred and Twelve Dollars and Eighteen Cents ($412.18), and that the Holman Real Estate Company also have a lien upon said property for the sum of One Hundred Twenty-eight Dollars and Fifty-six Cents ($128.56).

It is therefore considered, ordered and adjudged, that the said plaintiff, United States of America, do pay to the said defendants, W. B. Worthen & Company, agents, and Gordon N. Peay, trustee, the sum of Four Hundred Twelve Dollars and Eighteen Cents ($412.18), and the Holman Real Estate Company the sum of One Hundred and Twenty-eight Dollars and Fifty-six Cents ($128.56), and R. L. Hanks and Laura Hanks the sum of One Thousand, Three Hundred, Fifty-nine Dollars and Twenty-six Cents ($1,359.26), aggregating the sum of One Thousand Nine Hundred Dollars found as aforesaid as compensation for the right to use and appropriate for the uses and purposes of the United States of America the Sw. ¼ of the Nw. ¼ of section 3, Township 2 North, Range 12 West, situated in Pulaski County, State of Arkansas, the property of the defendants, R. L. Hanks and Laura Hanks.

And it is further considered, ordered and adjudged that upon the payments of the said sum of One Thousand Nine Hundred Dollars ($1,900.00), all right, title and interest in and to said property be vested in the said the United States of America, specially for its uses and purposes in connection with the construction, maintenance and operation of a military cantonment upon the said property.

It is further considered, ordered and adjudged that the said plaintiff, the United States of America, do pay to the defendant, Martin Lawrsen, the said sum of Two Thousand Dollars ($2,000.00), found as aforesaid, as compensation for the right to use and appropriate for the uses and purposes of the United States of America the Ne. fractional quarter of the Ne. ¼ of section 4, Township 2 North, Range 12 West, situated in Pulaski County, State of Arkansas, the property of the defendant, Martin Lawrsen.

And it is further considered, ordered and adjudged that upon the payment of the said sum of Two Thousand Dollars ($2,000.00), all of the right, title and interest in and to said property be vested in the said the United States of America, specially for its uses and purposes in connection with the construction, maintenance and operation of a military cantonment upon the said property.

(Signed) JACOB TRIEBER, Judge.

Satisfied in full as to R. L. Hanks and Laura Hanks this April 9th, 1918.

(Signed) GEO. W. HAYS,
Attorney for Defendants.

Satisfied in full as to W. B. Worthen & Co., as agents, and Gordon N. Peay as trustee, this April 9th, 1918.

(Signed) J. H. CLIFFORD,
Attorney of Record.

Satisfied in full as to Holman Real Estate Company this April 9th, 1918.

(Signed) HOLMAN REAL ESTATE CO.,
By W. E. Livingston, Secretary-Treasurer.

Satisfied in full as to Martin Lawrsen, this April 9th, 1918.

(Signed) GEORGE W. HAYS,
Attorney for Defendant.

Attest:
Sid B. Redding, Clerk,
By W. P. Feild, D. C.

No. 50.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS, ss.
In case No. 5871-L.

Of United States of America, against John Hild et al.
In the District Court of said United States,
in and for said District.

Paid into the Registry of this Court on the 25th day of October, A. D., Nineteen Hundred and Seventeen, by Wright, Cornish and Hemingway, the sum of Two Thousand Dollars, a fund for deposit.

SID B. REDDING,
Clerk of Said Court.

United States of America,
Eastern District of Arkansas.
No. 50.

Deposited this 25th day of October, A. D. Nineteen Hundred and Seventeen, in the name of the District Court of the United States of America, in and for the Eastern District of Arkansas, in the England National Bank of Little Rock, Arkansas, the sum of Two Thousand Dollars, as a fund. $2,000.00.

No. 51.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS, ss.
In case No. 5872-L.

Of United States of America, against R. L. Hanks, et al.
In the District Court of said United States,
in and for said District.

Paid into the Registry of this Court on the 25th day of October, A. D., Nineteen Hundred and Seventeen, by Wright, Cornish and Hemingway, the sum of Three Thousand Dollars, a fund for deposit.

SID B. REDDING,
Clerk of Said Court.

United States of America,
Eastern District of Arkansas.
No. 51.

Deposited this 25th day of October, A. D., Nineteen Hundred and Seventeen, in the name of the District Court of the United States of America, in and for the Eastern District of Arkansas, in the England National Bank of Little Rock, Arkansas, the sum of Three Thousand Dollars, as a fund. $3,000.00.

No. 52.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS, ss.

In case No. 5873-L.

Of the United States of America, against Martin Lawrsen et al..
In the District Court of said United States, in and for said District.

Paid into the Registry of this Court on the 25th day of October, A. D., Nineteen Hundred and Seventeen, by Wright, Cornish and Hemingway, the sum of Three Thousand Three Hundred Dollars, a fund for deposit.

SID B. REDDING,
Clerk of Said Court.

United States of America,
Eastern District of Arkansas.
No. 52.

Deposited this 25th day of October, A. D., Nineteen Hundred and Seventeen, in the name of the District Court of the United States of America, in and for the Eastern District of Arkansas, in the England National Bank of Little Rock, Arkansas, the sum of Three Thousand Three Hundred Dollars, as a fund. $3,300.00.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF ARKANSAS,
WESTERN DIVISION.

I, SID B. REDDING, Clerk of the District Court of the United States for the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing writing annexed to this certificate are true, correct and compared copies of the original remaining of record in my office, at Little Rock, Arkansas, of the judgments and Registry Record showing the payment of the fund into the Registry of the Court, in cases of United States vs. Hild et al., No. 5871-L.; United States vs. Hanks et al., No. 5872-L., and United States vs. Lawrsen et al., No. 5873-L., Cases Nos. 5872-L. and 5873-L., having been consolidated for trial.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Court, this 4th day of October, in the year of our Lord One Thousand Nine Hundred and Twenty-eight, and of the Independence of the United States of America, the One Hundred and Fifty-third.

SID B. REDDING, Clerk.
By W. P. Feild, D. C.

Attest:

EXHIBIT No. 4.

CERTIFICATE.

State of Arkansas,
County of Pulaski, ss.

I, W. S. Rogers, Clerk of the County Court of Pulaski County, Arkansas, do hereby certify that all articles of incorporation, and corporation annual reports located in Pulaski County, Arkansas, are filed and recorded in my office.

That Record Book "W," Pages 77 to 85, referred to in the annual report filed by the Army Post Development Company on the 9th day of June, 1922, a certified copy of which this certificate is attached to, shows that a list of stockholders, and among other stockholders in said list appears the name of Rose, Hemingway, Cantrell, Loughborough & Miles, as being subscribers to Sixty shares of the capital stock of the Army Post Development Company.

Given under my hand and seal of said court on this, the fourth day of October, 1928.

(Signed) W. S. ROGERS, Clerk.

(Seal) By Fred Adair, D. C.

EXHIBIT No. 5.

AFFIDAVIT OF W. S. HOLT.

State of Arkansas,
County of Pulaski.

I, W. S. Holt, on oath, state I am a citizen and resident of Pulaski County, Arkansas, and have been for more than forty years. During the time I have resided in Pulaski County, Arkansas, I have been engaged in the real estate and abstract business, and am familiar with all the lands comprising the Camp Pike military reservation. Some time in 1917, just after the United States entered the World War, there was organized an Arkansas corporation known as the Army Post Development Company, which was organized for the purpose of acquiring title to land in Pulaski County, Arkansas, so the same could be donated to the United States as an inducement to locate at or near Little Rock, Pulaski County, Arkansas, a military camp or cantonment for the purpose of training soldiers for the World War.

I purchased for Army Post Development Company the title to almost all of the land donated to the United States comprising the Camp Pike military reservation. Three or four tracts of land were acquired by instituting condemnation proceedings in order to clear the titles. I know Army Post Development Company paid for all of the lands purchased or condemned. About 2,500 acres, including that condemned, was donated to the United States, and it was on this particular land which was donated to the United States that all of its buildings on the Camp Pike military reservation were constructed. After the war was over the United States acquired title to some land adjacent to and adjoining the lands donated to it by the Army Post Development Company. These after-acquired tracts were purchased and paid for by the United States. However, none of the buildings erected by the United States in connection with Camp Pike were constructed on the land bought and paid for by the United States, as this land was not purchased until after the war was over.

W. S. HOLT.

Subscribed and sworn to before me this 4th day of October, 1928. GRACE LASSITER,
(Seal) Notary Public, State of Arkansas.

SUBJECT INDEX.

	Pages.
JURISDICTION	3- 4
STATEMENT	4-11
SUMMARY OF ARGUMENT	11-14
Argument:	
I. Merchandise located in Terminal Warehouse, in City of Little Rock, Pulaski County, Arkansas, and not on Camp Pike military reservation	15-19
II. Due process clause not violated	20-24
III. Merchandise taxable though located on Camp Pike military reservation	24-57
CONCLUSION	57
APPENDIX, Act 447 of Arkansas General Assembly for 1919	58-61

TABLE OF CASES.

Act 180 of 1903	7, 27, 28, 29, 30, 31, 33
Act 477 of 1919 (Appendix)	58
Act 147 of 1919	4
Act 180 of 1903 (also cited as Sections 4564-4565 of Crawford & Moses' Digest of the Statutes of Arkansas	7, 13, 27, 28, 29, 30, 31, 33
Act 477 of 1919	12, 24, 58
Aetna Life Ins. Co. v. Dunken, 266 U. S., 389	13, 21
Army Appropriation Act, August 26, 1919, Ch. 418, also cited as 39 Stat. L. 623	6, 28
Beal-Doyle Dry Goods Co. v. Beller, 105 Ark., 370, 150 S. W. 1033	12, 24
Cassels v. Wilder, 23 Haw., 61	14, 37, 38, 39
Clay County v. Bank of Knobel, 105 Ark., 450, 151 S. W. 1013	12, 24
Clay County v. Brown Lumber Co., 90 Ark., 413, 119 S. W. 251	12, 24

Concessions Co. v. Morris, 186 Pac., 655 ..... 56, 57
Cosier v. McMillan, 22 Mont., 484, 56 Pac. 965 ..... 14, 46, 47, 48
County of Cherry v. Thacher, 32 Neb. 350, 49 N. W. 351 ..... 14, 43
Ft. Leavenworth R. Co. v. Lowe, 114 U. S. 525 ..... 13, 14, 25, 26, 32, 33
Foster v. Pryor, 189 U. S. 325 ..... 14, 36
Ex parte Gaines, 56 Ark., 227, 19 S. W. 602 ..... 14, 55, 56
Haynie v. Surplus Trading Co., 174 Ark., 507, 297 S. W. 822 ..... 3, 13
Kansas City So. Ry. Co. v. C. H. Albers Com. Co., 223 U. S. 573 ..... 13, 21
Montana Catholic Missions v. Missoula County, 200 U. S. 118 ..... 14, 36
Nikis v. Commonwealth, 131 S. E. 236, 46 A. L. R. 219 (Virginia) 14, 44, 45
Noble v. Amoretti, 11 Wyo., 230, 71 Pac. 879 ..... 14, 48, 49, 50, 51, 52
Oscar Daniels Co. v. City of Sault Ste. Marie, 175 N. W. 160 (Michigan) 14, 53, 54, 55
Palmer v. Barrett, 162 U. S. 399 ..... 13, 29, 30
Rice v. Hammonds, 19 Okla., 419, 91 Pac. 698 ..... 14, 40, 41, 42
State v. Little, 94 Ark., 217, 126 S. W. 713 ..... 12, 24
State of Washington *ex rel.* Oregon R. & N. Co., v. Fairchild et al., 224 U. S. 510 ..... 13, 21, 22
Thomas v. Gay, 169 U. S. 264 ..... 14, 34, 35, 36, 37
Utah & N. Ry. Co. v. Fisher, 116 U. S. 28 ..... 14, 29
Wagoner v. Evans, 170 U. S. 588 ..... 14, 36

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

No. 33.

SURPLUS TRADING COMPANY.....*Plaintiff in Error*

v.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS.....*Defendant in Error*

BRIEF FOR DEFENDANT IN ERROR

JURISDICTION

This action comes to the Supreme Court of the United States on a writ of error. It was determined adversely to the plaintiff in error by the Supreme Court of Arkansas. The style of the action in the court of last resort in Arkansas is Haynie v. Surplus Trading Company. It is reported in 174 Ark., 507, 297 S. W. 822.

Jurisdiction of the Supreme Court of the United States in this action is predicated upon two false propositions—one of fact and the other of law. The Federal question raised by plaintiff in error is purely imaginary. Plaintiff in error has invoked the jurisdiction of this Court solely on the ground that the property sought to be taxed was located within the Camp Pike military reservation on May 1, 1922, the date claimed by it to be the legal date for assessing taxes. The undisputed facts show the assessment was made on June 6, 1922.

Under the tax laws of Arkansas the assessment was properly made on June 6, 1922.

Plaintiff in error concedes all of the merchandise was located in the Terminal Warehouse in the city of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation on June 6, 1922, when the assessment was actually made.

Plaintiff in error challenged the validity of the assessment in question in the Supreme Court of Arkansas. It was contended in the State court the assessment was invalid because, among other things, it was made on June 6, 1922.

It is now insisted here that because a part of the property sought to be taxed was on May 1, 1922, located on the Camp Pike military reservation, all of it is, therefore, exempt from taxation.

Plaintiff in error concedes it was the owner of all the personal property sought to be taxed on May 1, 1922. It also conces more than one-fourth of the merchandise was, on May 1, 1922, located in the Terminal Warehouse in the city of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation.

In contending here May 1, 1922, was "tax day" for the assessment of personal property in Arkansas, plaintiff relies upon the terms of Act 147, Acts of Arkansas for 1919. This is a complete reversal of the position assumed by plaintiff in error in the Supreme Court of Arkansas, as it there contended Act 147 of 1919 had been repealed by the provisions of a later Act. (R. 93.)

The contention of plaintiff in error that the assessment was not legally made in the manner and time provided for by the tax laws of Arkansas was resolved against it by the State court. (R. 92.) As the Supreme Court of Arkansas has held the assessment was legally made in the manner and time provided for by the tax laws of Arkansas, the plaintiff in error is not entitled to a review, on this issue, by the Supreme Court of the United States.

STATEMENT

The principal question presented by the assignment of errors challenges the power of the State of Arkansas to tax

personal property owned by plaintiff in error, a mercantile firm, and claimed to have been located, at assessing time, within the boundaries of the United States military reservation at Camp Pike, Arkansas.

Plaintiff in error contends the taxation of its property by the State of Arkansas conflicts and interferes with the constitutional power of the Congress to exercise exclusive legislation over the Camp Pike military reservation.

The United States did not acquire the particular tract of land included in the Camp Pike military reservation, and which is material to the issue here, in such manner as to vest in the Congress power to exercise exculsive legislation over it.

Although the power to exercise exclusive legislation over the reservation may be conceded; yet, defendant in error contends the local taxation by the State of Arkansas, and her subordinate taxing agencies, of personal property of others than the United States, is not an interference with the exercise of the exclusive legislative power by the Congress over the lands comprising the reservation.

The tax sought to be collected is not one levied upon property owned by the United States nor upon property used by the United States. The tax does not in any manner burden or interfere with the operation or execution of the powers vested in the United States. The tax here is simply a tax against the personal property of plaintiff in error, a mercantile firm, in common with all other property in the State of Arkansas of a similar character.

The Camp Pike military reservation is a tract of land lying within the boundaries of Pulaski County, Arkansas. The United States acquired the land constituting the reservation in 1917, at the time the United States entered the World War, or shortly thereafter.

The United States acquired the Camp Pike military reservation for the purpose of using it during the World War as an army cantonment for training soldiers. Temporary buildings were erected thereon for use during the World War. No permanent buildings were erected on the reservation.

The United States did not pay for any of the tracts of

land which are included in the Camp Pike military reservation, and material to a determination of the issues here. The particular tract of land mentioned here was donated to the United States by public-spirited citizens of the State of Arkansas. A corporation known as Army Post Development Company was organized. It purchased lands from the owners when it was able to agree with the owners on the price to be paid.

Where an agreement as to the price to be paid for the lands could not be reached, the United States exercised the right of eminent domain and instituted condemnation proceedings against the land. The corporation also furnished the money required to pay for the lands condemned.

The land was accepted for the United States by the Secretary of War under the provisions of Section One (1) of the Army Appropriation Act of August 29, 1916, Ch. 418, now cited as 39 Stat. L. 623. No money was appropriated by the Congress nor expended by the War Department for the purchase of the land included in the Camp Pike military reservation and which is material to the issues here. This is well known. Counsel for plaintiff in error had knowledge of the manner in which the United States acquired title to the land in question. The law firm of which counsel for plaintiff in error are members was a stockholder in the Arkansas corporation known as Army Post Development Company, which bought this land from the individual owners and donated it to the United States.

The land in question and which is material to the issues here, was not acquired by the United States *with the consent of the State of Arkansas given at the time of its acquisition.* By an act of the General Assembly of Arkansas in 1903 the State of Arkansas gave her consent to the purchase by the United States of any land made before that time, or to be made thereafter, of any site or ground for the erection of any armory, arsenal, fort, or other like public use. The State of Arkansas in the 1903 Act of Cession specifically released and relinquished her right to tax any such site, ground or real estate, and all improvements thereon, or thereafter erected thereon, only, during the time the United States should be and remain the owner thereof.

The right to tax the personal property of others than the United States located on such lands, however, was not released.

The act of cession also provided the grant of jurisdiction over such sites to the United States should not prevent the execution of any process of the State of Arkansas, civil or criminal, upon any person who might be upon said premises. (Act 180, Arkansas Laws, 1903, p. 346. Also cited as Sections 4564-4565 of Crawford & Moses' Digest of the Statutes of Arkansas, 1921.)

On May 15, 1922, the Secretary of War of the United States granted a revocable license to the State of Arkansas to occupy and use all of the real estate, buildings and utilities on the Camp Pike military reservation in connection with the organization and training of the National Guard of Arkansas. (R. 79-81). This license remained in force until November 30, 1922, when a similar license was granted. (R. 82-83.) The license of November 30, 1922, is still in force.

The State of Arkansas has complete control of the Camp Pike military reservation in all matters, except the military use of it by the United States cannot be impaired.

In the early part of 1922 the War Department of the United States had located at Camp Pike, Arkansas, a military reservation of the United States, a large quantity of surplus army property and supplies. The surplus property consisted of woolen army blankets, shoes, woolen shirts, and various other materials and supplies. The most valuable lot of property was a lot of about 90,000 woolen army blankets, worth about $2.75 each, or approximately $247,500.00.

The War Department asked bids for all the surplus property located at Camp Pike early in 1922. The date of the sale was set for March 31, 1922. Surplus Trading Company, the plaintiff in error, was the high bidder at this sale, offering $338,000 for all the property located at Camp Pike. The property was awarded to Surplus Trading Company, as the highest bidder, but at the request of a delegation of Arkansas citizens the sale was not consummated and the Secretary of War reopened the bidding for the surplus property at Camp Pike.

On April 21, 1922, the large lot of woolen army blankets at Camp Pike was sold to Surplus Trading Company for $138,000.

The next day, on April 22, 1922, Surplus Trading Company began the removal of the large lot of woolen blankets from Camp Pike. It is conceded by plaintiff in error that on May 8, 1922, sixteen (16) days later, the last of the large lot of blankets in question had been removed from Camp Pike. A few of the blankets were shipped from Camp Pike to various points in the United States, including points within the State of Arkansas, to be used as samples.

It is undisputed that practically all of the large lot of blankets was removed from Camp Pike to the Terminal Warehouse in Little Rock, Pulaski County, Arkansas, in automobile trucks, to be stored pending their sale and shipment in small lots to prospective buyers.

At the time the movement of the blankets started from Camp Pike to the Terminal Warehouse in Little Rock, Pulaski County, Arkansas, it was not known to whom nor where the blankets would eventually be shipped. Many of the blankets were sold to merchants in Little Rock, Arkansas, and delivered from the Terminal Warehouse to Little Rock merchants. Shipments of the blankets, and other merchandise owned and stored by Surplus Trading Company, in the Terminal Warehouse, continued throughout the year 1922.

On May 8, 1922, the Secretary of War sold the balance of the surplus property at Camp Pike to A. D. Cohn, as trustee, for the Camp Pike Honorary Commission, for approximately $140,000.

The Camp Pike Honorary Commission was an unincorporated body of citizens of Arkansas voluntarily organized to buy the surplus property at Camp Pike and resell it at a profit. It was intended to use the profits derived from the resale of the surplus property to erect improvements upon and beautify a part of the Camp Pike military reservation to be used for holding the annual encampments of the Arkansas National Guard.

When the sale of the balance of the surplus property at Camp Pike was made to A. D. Cohn, as trustee, the Camp

Pike Honorary Commission was without funds. Surplus Trading Company, the plaintiff in error, advanced the money to pay the War Department approximately $140,000 for the balance of the property sold to Camp Pike Honorary Commission.

The consideration which induced Surplus Trading Company to furnish the money to pay for the balance of the surplus property sold to the Camp Pike Honorary Commission was that it was agreed Surplus Trading Company should organize and manage the selling and distribution of the surplus property and supplies. Surplus Trading Company was to receive the proceeds of all sales until it had been repaid in full for the $140,000 advanced by it. After this amount had been repaid Surplus Trading Company from the proceeds of the sales, plaintiff in error was to receive one-third of all net profits realized up to $100,000 and one-half of any profits in excess of $100,000.

It was at first contemplated the surplus property at Camp Pike awarded to the Camp Pike Honorary Commission would be sold at public auction sales.

However, before the public auction sales started, several private sales were made of large quantities of the most desirable property located at Camp Pike. One of these sales consisted of 40,000 woolen shirts at a price of $1.40 per shirt, or a total of $56,000.

The amount of the purchase price of the shirts was allowed as a credit by Surplus Trading Company, plaintiff in error, on the $140,000 advanced by it to pay the War Department for the surplus property sold to Camp Pike Honorary Commission.

Plaintiff in error now claims the shirts were owned by Kalter-Cerf Mercantile Company, one of the partners of Surplus Trading Company. The shirts were also removed from Camp Pike and stored in the Terminal Warehouse in Little Rock, Pulaski County, Arkansas, where the large lot of blankets was stored. The shirts were removed from Camp Pike to the Terminal Warehouse prior to the date the assessment in question was made.

From time to time in 1922, as the auction sales were held, Surplus Trading Company bought various other lots

of merchandise and stored the same in the Terminal Warehouse, in addition to the blankets.

Surplus Trading Company and the various persons, firms and corporations composing that mercantile partnership, did not assess their property for taxation for the year 1922. On June 6, 1922, after the time for voluntary assessments had expired, the Assessor of Pulaski County, Arkansas, made an assessment against Surplus Trading Company for $100,000. The basis of this assessment was goods and merchandise stored in the Terminal Warehouse in the city of Little Rock, Pulaski County, Arkansas, and owned by plaintiff in error, Surplus Trading Company. It is conceded by plaintiff in error that the merchandise, when assessed, was actually located in the Terminal Warehouse in Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation.

This assessment against Surplus Trading Company was made and included in the personal property assessments for the year 1922, which were filed with the county clerk of Pulaski County, Arkansas, by the Assessor on September 2, 1922, as required by law.

After the personal property assessment books were filed with the County Clerk, the Assessor of Pulaski County, Arkansas, made a separate assessment against the plaintiff in error, of $35,000 for moneys on deposit in a bank in Little Rock, Pulaski County, Arkansas.

Surplus Trading Company also failed to make any assessment of its taxes in Pulaski County, Arkansas, for the year 1923, and the assessor of Pulaski County, Arkansas, made an assessment against it for moneys deposited in a Little Rock, Arkansas, bank. The 1923 assessment was held invalid by the Arkansas courts. Neither of the assessments relating to moneys on deposit in the Little Rock, Arkansas, banks are involved here. The question here is only as to the 1922 merchandise assessment.

The validity of the merchandise assessment in question was challenged by plaintiff in error for the first time in this action. No objection was made to the assessment by plaintiff in error before the Board of Equalization for Pulaski County, Arkansas.

Upon failure of the plaintiff in error to pay the tax levied, this action was filed in the Pulaski County, Arkansas, Chancery Court by the predecessor in office of the defendant in error. It was there decided adversely to the predecessor in office of the defendant in error. However, on appeal the Supreme Court of Arkansas reversed the decree of the trial court in part and affirmed it in part. The 1922 assessment was upheld. The 1923 assessment was declared invalid because the moneys deposited in the Little Rock, Arkansas, banks was deposited in the name of the Camp Pike Honorary Commission.

The Supreme Court of Arkansas reversed the decree of the Pulaski Chancery Court and remanded the cause to the trial court with directions to the trial court to allow the defendant in error to recover against plaintiff in error the amount of the tax based upon the assessment made against it for the year 1922, with statutory penalties. (R. 95.) Without awaiting the entry of the decree in the Pulaski County, Arkansas, Chancery Court, as provided by the decree of the Supreme Court of Arkansas, plaintiff in error applied for and obtained a writ of error to the Supreme Court of the United States.

SUMMARY OF ARGUMENT.

I.

The merchandise in question, when assessed, was located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and not within the boundaries of the Camp Pike military reservation.

The uncontroverted facts here show the assessment in question was made on June 6, 1922. (R. 41, 42.)

The assessment made on June 6, 1922, was valid under the tax laws of Arkansas. Plaintiff in error bought the blankets from the War Department of the United States on April 21, 1922, and it concedes that at all times thereafter it was the owner of the same. There is no dispute that on May 1, 1922, more than one-fourth of the blankets were stored and located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and on June 6, 1922, when blankets were assessed

for taxation, all of the blankets were also in the Terminal Warehouse. The blankets were removed from Camp Pike military reservation to the Terminal Warehouse beginning April 22, 1922, and before May 8, 1922, all of the blankets had been stored in the Terminal Warehouse. (R. 50, 51, 52, 53, 54, 55, 62, 63, 64, 74.)

II.

Plaintiff in error has not been denied due process of law. It is conceded by plaintiff in error at least 21,235 of the blankets owned by it were located in the Terminal Warehouse, in the City of Little Rock, Pulaski County, Arkansas, on May 1, 1922, the date claimed by plaintiff in error to be "tax day" under the laws of Arkansas. It is not contended the blankets located in the Terminal Warehouse were exempt from taxation. Although plaintiff in error concedes these facts, it did not assess the blankets stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, for taxation. It was the duty of plaintiff in error to assess its property. *Beal-Doyle Dry Goods Co. v. Beller*, 105 Ark., 370, 150 S. W. 1033. Failing to assess its property, plaintiff in error cannot now be heard to question the valuation placed on it by proper authorities. If plaintiff in error desired to question valuation it should have applied to the Board of Equalization for Pulaski County, as required by Act 477 of Acts of Arkansas for 1919. (See Appendix.) Failing to pursue this remedy, the courts are powerless to give plaintiff in error any relief. *Clay County v. Bank of Knobel*, 105 Ark., 450, 151 S. W. 1013; *State v. Little*, 94 Ark., 217, 126 S. W. 713; *Clay County v. Brown Lumber Co.*, 90 Ark., 413, 119 S. W. 251.

It is necessary for Supreme Court of United States to review facts to determine if blankets were located on Camp Pike military reservation when assessed. Plaintiff in error contends the tax, if enforced, will constitute a taking of its property without due process of law. Therefore, the location of the blankets is material to determine if plaintiff in error will be denied due process of law by upholding tax in question. If, as is insisted by defendant in error and shown by the undisputed facts, the blankets were located in the Terminal Warehouse in the City of Little Rock, Arkan-

sas, when assessed, no Federal questions exists here, and, of course, the Supreme Court of the United States is without jurisdiction to determine this cause. The question of fact as to the location of the blankets when assessed is properly reviewable here under the rule stated in cases of *Aetna Life Ins. Co. v. Dunken*, 266 U. S. 389; *Kansas City Southern R. Co. v. C. H. Albers Com. Co.*, 223 U. S. 573, and *State of Washington ex rel. Oregon R. & N. Co. v. Fairchild et al.*, 224 U. S. 510.

III.

The State of Arkansas and her subordinate taxing agencies may tax merchandise of plaintiff in error, although it was located on Camp Pike military reservation when assessed. However, defendant in error contends merchandise was not within Camp Pike military reservation when assessed, but, on the contrary, was stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

The land in question here comprising Camp Pike military reservation was not acquired by United States in manner contemplated by Section 8, Article 1, sub. 17, of Constitution of the United States. *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525. Therefore, jurisdiction of the United States over Camp Pike military reservation depends upon provisions of cession act of General Assembly of Arkansas, approved April 29, 1903. *Palmer v. Barrett*, 162 U. S. 399; 39 Cyc. 731; 26 R. C. L., 1442. The cession act of Arkansas impliedly reserved the right to State of Arkansas to tax privately owned personal property on Camp Pike military reservation. 36 Cyc. 1122; 25 R. C. L. 981; *Haynie v. Surplus Trading Co.*, 174 Ark., 507, 297, S. W. 822.

The cession act granted a benefit and acquisition of land for Camp Pike military reservation by United States without dissent as to terms shows United States intended to acquire and use lands under conditions imposed by cession act. *Fort Leavenworth R. Co. v. Lowe, supra.*

The land in question and where blankets were stored when bought by plaintiff in error, were not actually purchased by United States, but were donated by public-spirited citizens of Arkansas.

The word "purchase," used in the Federal Constitution, means only acquisition by actual purchase. *Fort Leavenworth R. Co. v. Lowe, supra.*

No appropriation was ever made by Congress to pay for the land in question here, and War Department did not expend any money for the same. Although agreed statement of facts speaks of acquisition of lands by United States as by "purchase," this must be construed in the light of the legislation of Congress, which shows no money was appropriated or paid for the land in question. Then, too, a stipulation as to an alleged fact will not be construed so as to allow one to escape taxation when the legislation of Congress shows the fact did not exist. *Utah & N. Ry. Co. v. Fisher*, 116 U. S. 28.

Tax exemptions are never lightly to be inferred. *Heiner v. Colonial Trust Co.*, 275 U. S. 232. A State may tax personal property situated on a government reservation within its limits and not belonging to the United States or otherwise exempt. 26 R. C. L., 100; *Thomas v. Gay*, 169 U. S. 264; *Wagoner v. Evans*, 170 U. S. 588; *Foster v. Pryor*, 189 U. S. 325; *Montana Catholic Missions v. Missoula County*, 200 U. S. 118; *Cassels v. Wilder*, 23 Haw., 61; *Rice v. Hammonds*, 19 Okla., 419, 91 Pac. 698; *County of Cherry v. Thacher*, 32 Neb., 350, 49 N. W. 351; *Nikis v. Commonwealth*, 131 S. E. 236, 46 A. L. R. 219 (Virginia); *Cosier v. McMillan*, 22 Mont., 484, 56 Pac. 965; *Noble v. Amoretti*, 11 Wyo., 230, 71 Pac. 879; *Oscar Daniels Co. v. City of Sault Ste. Marie*, 175 N. W. 160 (Michigan), and *ex parte Gaines*, 56 Ark., 227, 19 S. W. 602.

I.

THE MERCHANDISE WHICH WAS THE SUBJECT OF THE ASSESSMENT WAS LOCATED AT TERMINAL WAREHOUSE, IN CITY OF LITTLE ROCK, PULASKI COUNTY, ARKANSAS—NOT ON CAMP PIKE MILITARY RESERVATION.

For its principal assignment of error plaintiff in error contends the State of Arkansas, and her subordinate taxing agencies, are without authority to tax personal property of plaintiff in error. This assignment of error is grounded upon the false proposition that the merchandise in question was located within the boundaries of Camp Pike military reservation and was, for that reason, outside the taxing jurisdiction of Pulaski County, Arkansas. When this assignment of error is tested by the undisputed facts of this case one is convinced it is untenable and is not supported by fact, reason or authority.

Plaintiff in error concedes it purchased the merchandise in question on April 21, 1922, and was at all times thereafter the owner of the same. It admits it was the owner of the merchandise on May 1, 1922, and also, on that date, more than one-fourth of the blankets in question were located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation.

The undisputed facts show the assessment in question was made on June 6, 1922, and, on the date when the assessment was actually made, the plaintiff in error concedes all of the blankets, as well as the other merchandise, which was made the basis of the assessment was, in fact, stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation. The undisputed proof here shows all of the property assessed for taxation was located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and was not at Camp Pike when assessed.

The assessment was not based upon any property located within Camp Pike. This is plainly shown by the testimony of W. T. Dorough, County Assessor of Pulaski County, Arkansas. In answer to a question on cross-examination, he stated:

"Q. Was your assessment based on the property that Surplus Trading Company bought at Camp Pike?"

"A. Yes, sir." (R. 48.)

It is uncontroverted all of the property which was the subject of the assessment was stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas. It was there for more than 30 days before the assessment was made on June 6, 1922. The Assessor asked S. J. Beauchamp, the manager of the Terminal Warehouse, for information as to the value of the property before making the assessment and he refused to give the Assessor any information as to its value. (R. 47, 48.)

The merchandise was at Camp Pike when it was bought by Surplus Trading Company from the War Department of the United States. But, immediately after its purchase by Surplus Trading Company on April 21, 1922, it was removed to the Terminal Warehouse.

The removal of the merchandise from Camp Pike to the Terminal Warehouse was completed before May 8, 1922.

All of the testimony offered by plaintiff in error plainly shows the merchandise was located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, at assessing time. There was a reason for the removal of the merchandise from Camp Pike. Max Kalter, the managing officer of the Surplus Trading Company, on this point, in his direct examinaton says:

"Q. Mr. Kalter, about what date was that? I ask you this question because the shipping ticket relates, I believe, that the contract is dated April 22, 1922.

"A. These negotiations were continued from about the 10th of April until the 21st of April. I immediately wired our representative at Camp Pike to have these goods removed from Camp Pike and put into the Terminal Warehouse for the purpose of re-shipping them from there. My reason for having them taken to the Terminal Warehouse were, firstly, that the goods could not be shipped from Camp Pike in less than carload lots; secondly, we thought the insurance rate at Camp Pike was prohibitive, and thirdly, and perhaps the most important reason of all was that having once

suffered through the Arkansas influence in Washington and having had one contract suspended, I was afraid that when the people in Arkansas found out that blankets which were undoubtedly the choicest portion of the materials in this Camp had been sold, they would perhaps take steps to block me, and I felt that if they were out of the Government warehouse, they would not be able to do any such thing.

"Q. Mr. Kalter, on the shipping ticket to which you have just referred there appears the notation in the space for the date 'Shipped or delivered 5-8-22.' What is the significance of that notation?

"A. That is the date that the shipment was completed." (R. 74.)

Ben Sagor, who was a witness for plaintiff in error, and its manager in Arkansas, and the man who supervised the removal of the merchandise from Camp Pike to the Terminal Warehouse, in his direct examination, on this point, says:

"Q. Did you receive a shipping ticket from the properly authorized officer of the War Department to the Surplus Trading Company?

"A. Yes, sir.

"Q. I show you what purports to be a shipping ticket from the property officer, Camp Pike, Arkansas, dated May 8, 1922. Will you state whether that is the shipping ticket covering this lot of blankets?

"A. It is. * * * *

* * * * * *

"Q. Mr. Sagor, will you attach this shipping ticket to your deposition as an exhibit thereto?

"A. I will." (R. 59.)

The shipping ticket is set forth in full at R. 59, 60.

"Q. Mr. Sagor, this shipping ticket is dated as I said, May 8, 1922, that being the date of the delivery to the Surplus Trading Company of this property. Is that correct?

"A. Yes, sir. (R. 60.)

* * * * * * *

"Q. Mr. Sagor, while you were in Little Rock handling the disposal of goods in connection with the auction sales for the Honorary Commission did you keep an account of the movement and disposition of this lot of blankets of which we were speaking?

"A. I did. * * * *

* * * * * * *

"Q. Do your records show the dates of each load of blankets together with the number of cases in each load, and the total blankets in each load of this merchandise received by the Terminal Warehouse in Little Rock, Arkansas, from Camp Pike?

"A. They show the exact number of cases, or bales, whichever the case was.

* * * * * * *

"Q. Who kept this record, Mr. Sagor?

"A. I did.

"Q. Are all of the entries in this record in your own handwriting?

"A. Yes, sir.

"Q. Were they made contemporaneously with the items which they are proposed to note?

"A. They are.

"Q. Are they correct?

"A. Yes.

"Q. Will you introduce photostatic copies of the pages 2, 10, 11, 20, 22, 23, 24, 40, 41, 42, 50, 51, 60 and 61, of your ledger and mark them as exhibits to your deposition?

"A. Yes, sir." (R. 61.)

Photo-static copies of pages 10, 20, 40, 50 and 60 of the ledger kept by Mr. Sagor are included in the printed transcript of the record and are pp. 62, 63, 64 of the record.

These pages show the dates the merchandise was removed from Camp Pike to the Terminal Warehouse. The removal of this merchandise started from Camp Pike on April 22, 1922 and all of the merchandise was removed from Camp Pike and stored in the Terminal Warehouse on May 8, 1922, according to the record kept by Mr. Sagor.

The copy of the 1922 assessment list made by the Assessor of Pulaski County against Surplus Trading Company for the merchandise plainly shows the assessment was made on June 6, 1922. (R. 41, 42.)

The testimony of the witnesses, Henry Moore, (R. 50, 51, 52, 53), and of W. O. Koen, (R. 53, 54, 55), also shows the merchandise was not on the Camp Pike Military Reservation when assessed.

II.

DUE PROCESS OF LAW CLAUSE NOT VIOLATED.

It is contended by plaintiff in error the taxing of the merchandise in question by the State of Arkansas, and her subordinate taxing agencies, constitutes a violation of the due process of law clause of the Federal Constitution.

This contention is not supported either by fact or law. Plaintiff in error relies upon two false propositions—one of fact, the other of law—to sustain the argument it makes on this point.

The false proposition of fact upon which plaintiff grounds its argument on this point is the merchandise owned by it was located on Camp Pike military reservation and not at Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

The erroneous proposition of law advanced by plaintiff in error to support this contenton is the land comprising Camp Pike military reservation is outside the jurisdiction of the State of Arkansas, and her subordinate taxing agencies. Defendant in error has elsewhere in this brief plainly pointed out the falsity of each proposition.

Plaintiff in error predicates this contention upon the statement that the merchandise sought to be taxed was located outside the taxing jurisdiction of the State of Arkansas. Of course, if the merchandise sought to be taxed was not outside the taxing jurisdiction of the State of Arkansas then this contention of plaintiff in error must fail. The truth or falsity of this premise must be first determined by the Supreme Court of the United States before it will be able to decide whether plaintiff in error was denied the protection of the due process of law clause of the Federal Constitution by the decree of the Supreme Court of Arkansas.

The contention of plaintiff in error that the tax, if enforced, would constitute a taking of property without due process of law makes it necessary for the Supreme Court of the United States to review the facts of this case.

As to whether the merchandise was located within the boundaries of Camp Pike military reservation or at the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, at the time of assessment is a question of fact. Whether the merchandise was located outside the

taxing jurisdiction of the State of Arkansas, and her subordinate taxing agencies, is a mixed question of fact and law. Both questions must be considered in determining whether plaintiff in error has been denied the protection of the due process clause.

Of course, the Federal right claimed to have been denied plaintiff in error is the denial of due process of law. The conclusion of law as to the Federal right claimed to have been denied and the findings of fact are so intermingled and interdependent as to cause it to be necessary to consider the latter in order to pass upon the former.

Defendant in error admits the rule is well settled by a long line of decisions of the Supreme Court of the United States that the decision of a state court upon a question of fact ordinarily cannot be made the subject of inquiry by the United States Supreme Court. However, to this general rule there are two equally well-settled exceptions, to wit:

(1) Where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it; and

(2) Where a conclusion of law as to a Federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts.

Aetna Life Ins. Co. v. Dunken, 266 U. S., 389.

This case comes within the second exception.

Kansas City Southern R. Co. v. C. H. Albers Comm. Co., 223 U. S., 573.

In determining whether the due process of law clause of the Federal Constitution had been violated the Supreme Court of the United States has held it had the power to review the facts as shown by the entire record.

State of Washington, ex rel. Oregon R. & N. Co., v. H. A. Fairchild, et al., 224 U. S., 510.

The question at issue in the cited case was whether, as a matter of law, the order of the Oregon Railroad Commission, requiring the plaintiff in error to make track connections with competing carriers, on the facts proved, was so unreasonable as to amount to taking of property without due process of law. As to the power of the Supreme Court of the United States to review the facts in the record, it was said:

*"This necessitates an examination of the evidence, not for the purpose of passing on conflicts in the testimony, or of deciding upon pure questions of fact, but, as said in Kansas City Southern R. Co. v. C. H. Albers Commission Co., 223 U. S. 591, from an inspection of the 'entire record, including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependent upon such questions of law as to be in substance and effect a decision of the latter.' Citing cases. * * * Here the question presented is whether, as matter of law, the facts proved show the existence of such public necessity as authorizes a taking of property."*

Plaintiff in error says if it is required to pay the tax here that, as a matter of law, the facts proved show it would constitute a taking of its property without due process of law. Defendant in error insists this question makes it necessary for the Supreme Court of the United States to review the facts properly incorporated in the record. This necessarily requires an inquiry to ascertain where the merchandise in question was located—whether on Camp Pike military reservation or at Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas. The undisputed facts of this record show the merchandise was located in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas, and not on the Camp Pike military reservation, as contended by plaintiff in error. The Federal question asserted to be involved in this case as to the power of the State of Arkansas to tax personal property of third persons, located on a military reservation of the United States is based solely upon the theory that the merchandise was located on Camp Pike military reservation.

There will not be any Federal question in this case when the facts of this record are examined and plainly understood. When this fact is determined it is insisted by the defendant in error the jurisdiction of the Supreme Court of the United States will fail.

Defendant in error concedes the State of Arkansas is without authority to tax property located or existing per-

manently beyond its limits. But the facts in this case do not justify the conclusion that the merchandise, which was the subject of the assessment in question, was located permanently beyond the limits of the State of Arkansas.

The undisputed facts of this record show that, on April 21, 1922, plaintiff in error purchased from the United States 87,143 woolen army blankets, then situated on the Camp Pike military reservation. Plaintiff in error paid $138,492.65 for these blankets. On April 22, 1922, the removal of this large lot of blankets was started from Camp Pike military reservation, and prior to May 8, 1922, all of the blankets were removed from the reservation. Practically all of the blankets were removed from Camp Pike and stored in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

Plaintiff in error seeks to invoke the jurisdiction of the Supreme Court of the United States for the reason, as it claims, the merchandise, which was the basis of the assessment in question, was located within the Camp Pike military reservation on the legal date for assessing taxes in Arkansas. It is not disputed that plaintiff in error was the owner of all the merchandise on May 1, 1922, the date it claims was "tax day" in Arkansas. It is conceded by plaintiff in error that all of the merchandise was not located on the Camp Pike military reservation on May 1, 1922, but it admits that more than one-fourth of the merchandise was located on that date in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

Plaintiff in error concedes on May 1, 1922, there was, at least 21,235 of the blankets owned by it located at the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

Plaintiff in error does not contend the blankets admitted by it to be in the Terminal Warehouse on May 1, 1922, were exempt from taxation. It cannot be doubted the blankets located in the Terminal Warehouse on May 1, 1922, were subject to assessment. Although plaintiff in error was the owner of the blankets stored in the Terminal Warehouse on May 1, 1922, it did not make an assessment of the same and did not intend to make an assessment.

Plaintiff in error was charged with a knowledge of the tax laws of Arkansas.

It was the duty of plaintiff in error to assess its property in the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

Beal-Doyle Dry Goods Co. v. Beller, 105, Ark., 370, 150 S. W. 1033.

For the first time plaintiff in error objects to the assessment of its property in this action. It did not question the assessment for 1922 before the Board of Equalization of Pulaski County, Arkansas, as required by Act 477 of the General Acts of Arkansas for 1919; pp. 348-353 (See Appendix).

Having failed to assess its property, plaintiff in error can not now be heard to object to the assessment made by the proper authorities. The valuation placed upon the property by the Assessor of Pulaski County, Arkansas, was $100,000. If plaintiff in error thought this valuation was excessive it should have pursued the remedy provided for its relief under the statute.

Failing to pursue this remedy the courts cannot give plaintiff in error any relief.

Clay County v. Bank of Knobel, 105 Ark., 450: 151 S. W. 1013.

State v. Little, 94 Ark., 217; 126 S. W. 713.

Clay County v. Brown Lumber Co., 90 Ark., 413, 119 S. W. 251.

III.

STATE OF ARKANSAS MAY TAX MERCHANDISE OF PLAINTIFF IN ERROR, THOUGH IT WAS LOCATED ON U. S. RESERVATION.

But if it should be determined the merchandise of plaintiff in error, or any part of it, against which the assessment was made, was located on Camp Pike military reservation, which is not conceded by defendant in error, it would still be subject to taxation.

In order to have exclusive jurisdiction under Section 8, Article 1, the United States must have acquired the land by purchase, with consent of the State, and for one of the purposes specified, and the word *purchase*, used in this clause,

means only acquisition by *actual purchase*. Also land acquired in any other way than under Section 8, Article 1, is still subject to the State, except governmental use of it cannot be impaired; and in such case the State may cede the lands with any conditions which do not impair the governmental use contemplated and the laws of the State still retain their full force, except where inconsistent with the laws of the United States, until abrogated by the United States.

39 Cyc., 731.
26 R. C. L., 1442.

On this point the Supreme Court of the United States has said:

> "Where, therefore, *lands* are *acquired in any other way* by the United States within the limits of a State *than by purchase with her consent*, they will hold the land subject to this qualification; that if upon them forts, arsenals or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. *But, when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits.*
>
> "As already stated, the land constituting the Fort Leavenworth Military Reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a State; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the State since her admission in the Union. It not being a case where exclusive legislative authority is vested by the Constitu-

> tion of the United States, that cession could be accompanied with such conditions as the State might see fit to annex, not inconsistent with the free and effective use of the fort as a military post."
>
> *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525, at p. 539.

The word *"purchase"* used in the clause of the Federal Constitution under consideration means only acquisition by *actual purchase*. This was the holding in *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525, where the constitutional provision relied upon by plaintiff in error here was strictly construed. It was held in the Lowe case, *supra*, that the word "purchase," as used in the clause of the Constitution involved here, has not the general technical meaning attached to it at common law as including any acquisition of lands by some other way than such actual purchase, and that, if the United States acquires land by direct cession from a State of its own land, as distinguished from a purchase by consent, it may be upon such conditions as the State may determine to impose, not inconsistent with the free and effective use of such land for the purposes intended. Applying this construction, the State of Kansas having ceded a part of its territory for the Fort Leavenworth military reservation, and having in the conveyance retained the right to tax railroad, bridge and other corporations, their franchises and property, on said reservation, such retention of this power to tax was upheld by the Supreme Court of the United States.

When the rule announced in *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525, and the facts of that case are analyzed and understood in the light of the facts of this case, it is plain the decision of the Supreme Court of Arkansas is not in conflict with the rule in the *Lowe* case. In fact, the rule announced by the Supreme Court of the United States in the *Lowe* case is authority for the decree of the Supreme Court of Arkansas in this case. The tax in each case was levied against property owned by another than the United States. The property involved in each case, which was the subject of the assessment, was not used for any governmental purpose. The Act of Kansas of 1875 ceding jurisdiction over the Fort Leavenworth military res-

ervation to the United States was not passed at the time of the acquisition of the lands comprising that reservation, but after the lands had been acquired by the United States. The Act of Arkansas of 1903 ceding jurisdiction over the Camp Pike military reservation to the United States was not passed at the time of the acquisition of the lands comprising that reservation, but long before the lands had been acquired by the United States.

In the Kansas act of cession there is an express reservation of the right to the State of Kansas to tax railroad, bridge and other corporations, their franchises and property, on the Fort Leavenworth reservation. This was a condition which could not have been attached to the act of cession if the lands comprising the Fort Leavenworth reservation had been acquired by the United States as contemplated by Article 1, Section 8, of the Federal Constitution.

In the Arkansas act of cession there is an implied reservation of the right to the State of Arkansas to tax personalty owned by others than the United States on the Camp Pike military reservation. This is, likewise, a condition which could not have been attached to the act of cession if the lands comprising the Camp Pike military reservation had been acquired by the United States as contemplated by Article 1, Section 8, of the Federal Constitution.

However, the reason advanced in the *Lowe* case for adopting the rule there announced does not exist here. The reason for exempting from State control land purchased by the United States, with the consent of the State, for the purposes specified in Section 8, Article 1, of the Federal Constitution, is to insure the free and unimpeded exercise of the independence and sovereign authority of the general government over such lands.

Under Article 1, Section 8, of the Federal Constitution, if a site is *actually purchased* by the Federal government, *with the consent of the State given at the time of the purchase*, for a specified government purpose, then no cession of jurisdiction by the State is necessary and no conditions can be attached by the State in giving her consent.

However, the undisputed facts here clearly show the consent of the State was not given at the time of the acquisi-

tion of Camp Pike by the United States, and further, the power to tax personal property thereon was reserved to the State of Arkansas by the cession act of 1903, as is hereafter shown.

Camp Pike was not acquired by the United States in the manner contemplated by Section 8, Article 1, of the Constitution of the United States.

The particular land in question lies within the boundaries of Pulaski County, Arkansas. It was donated to the United States at, or about, the time this government entered the World War in 1917. The purpose of acquiring the land was to use it during the World War as an army cantonment for training soldiers. Only temporary buildings were erected on the land.

The United States did not actually purchase or pay for the land in question. A corporation known as Army Post Development Company was organized under the laws of Arkansas. The stockholders of this corporation were public-spirited citizens of the State of Arkansas. They contributed money to a fund which was used to pay the purchase price for the land in question when an arrangement could be reached with the owners as to the purchase price to be paid. In the event of the failure to reach an agreement as to the price to be paid for the lands the United States exercised the right of eminent domain and instituted condemnation proceedings against the land. The corporation furnished the money required to be paid for the lands condemned.

The Secretary of War accepted the land for the United States, as provided by the Army Appropriation Act of August 29, 1916, Section One (1), Chapter 418, and which is cited as 39 Stat. L. 623. The Congress did not appropriate any money nor did the War Department expend any money for the acquisition of the land in question here.

These facts are conclusively established by the legislative enactments of the Congress, and were known to counsel for plaintiff in error. As a matter of fact, the law firm of which counsel for plaintiff in error are members was a stockholder in the corporation which purchased the land in question and donated it to the United States. This, however, must be construed in connection with the legislation of the

Congress. It is plain the various enactments of the Congress shows the United States did not appropriate nor pay any money for the land in question. The Supreme Court of the United States has held that a stipulation as to an alleged fact will not be construed so as to allow one to escape taxation when the legislation of the Congress shows the fact did not exist.

Utah & N. Ry. Co. v. Fisher, 116 U. S., 28.

In entering into the stipulation as to the manner in which the lands comprising the Camp Pike military reservation were acquired by the United States it was the intention of the parties to agree only upon the facts as they actually existed. Counsel for plaintiff in error drafted the stipulation and represented to counsel for defendant in error that the facts set forth therein were true.

The legislative act of the General Assembly of Arkansas of 1903 (now *Sections* 4564, 4565, *Crawford & Moses' Digest*, Statutes of Arkansas), cited by plaintiff in error, at pp. 20, 21 of their brief, does not give consent within the meaning of Section 8, Article 1, of the Constitution of the United States, to this purchase of lands made many years later. *The Act of* 1903 *does not give consent to the purchase at the time of a specified tract for a specified purpose, but gives consent to all past and future purchases for any governmental purpose.* It contains an implied condition, reserving the right to tax personal property of others than the United States on the reservation, which it would not do if it were a purchase under Section 8, Article 1, of the Constitution of the United States—that clause of the Federal Constitution not admitting of a condition of any kind by the State.

This case is within the rule announced in *Palmer v. Barrett*, 162 U. S., 399, where the Supreme Court of the United States said:

> "The land in question had been purchased by the United States without the consent of the State being given at the time the purchase was made. If, therefore, we assume that the lands were acquired by the government by purchase, still Section 8, of Article 1, of the Constitution of the United States, conferring upon Congress authority to exercise ex-

> clusive legislation over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings, had no application. *Fort Leavenworth R. Co. v. Lowe*, 114 U. S., 525. The question, therefore, depends upon the provisions of the act of the Legislature of the State of New York, already referred to, by which jurisdiction was ceded to the United States. * * * This Court said, in *Fort Leavenworth R. Co. v. Lowe* (p. 539), *supra*: 'It not being a case where exclusive legislative authority is vested by the Constitution of the United States; that cession could be accompanied with such conditions as the States might see fit to annex, not inconsistent with the free and effective use of the fort as a military post.' "

The rule is, a State ceding jurisdiction over lands acquired by the Federal government in a manner other than that contemplated by Seceion 8, Article 1, of the Constitution of the United States, may attach any conditions which do not hamper the use of the lands of the Federal government. When the United States acquires land in the manner in which the land comprising the Camp Pike reservation was acquired, jurisdiction must be ceded by the State. The cession act of 1903 must, therefore, be looked to in order to determine the extent of the power remaining in the State of Arkansas.

The Act of April 29, 1903, does not specify the jurisdiction remaining in the State of Arkansas as to taxation; but it does enumerate the taxation powers released by the State of Arkansas, *i. e.*, the power to tax lands and improvements thereon; and, by specifically enumerating the powers of taxation released, the State thereby retains all power to tax not thus released.

36 Cyc., 1122.
25 R. C. L., 981.

This construction of the cession act of Arkansas is in accordance with the maxim, *"expressio unius est exclusio alterius."*

The Supreme Court of Arkansas, in construing the provision of the cession act of 1903 as to the reservation by the State of Arkansas of the power to tax personal property of third persons on sites acquired by the United States for governmental purposes, said:

> "Thus it will be seen that by the terms of the Act itself it was not intended by the State to part with jurisdiction for the purpose of listing personal property of third persons in the reservation for assessment and taxation. The grant by the State expressly cedes its right to tax the land and buildings granted to the United States, and this of itself indicates an intention to reserve jurisdiction for taxation over the property of third persons located on such reservation. The United States accepted the grant upon the terms indicated, and, by its acceptance, acknowledged that there was no occasion for the State to cede exclusive jurisdiction to the United States or to exempt from State taxation the property of third persons situated upon the reservation, which was not used by the United States as a public agency or instrumentality for carrying out the purpose of the grant." (R. 90, 91.)

Assuming, but not conceding, the merchandise of plaintiff in error was located on Camp Pike military reservation, the taxing of the merchandise by the State of Arkansas would not interfere with, nor would it destroy or impair the use of the lands by the United States as a temporary cantonment. To require plaintiff in error to pay the tax here involved would not deprive the United States of any right whatever with respect to the lands comprising the Camp Pike military reservation. The exemption of plaintiff in error from the payment of the tax is not essential to the exercise by the United States of its independence and sovereign authority over the lands in question. Any argument to the contrary would be ridiculous.

Counsel for plaintiff in error have wholly failed to point out in what respect the enforcement of the tax here involved in any wise defeats, affects or embarrasses the effective use of the Camp Pike military reservation by the United States.

The Camp Pike grounds have no permanent forts or

barracks of the government on them, and are not and were not, at the time the assessment in question was made, in use by the government, having been used temporarily only as a cantonment for training soldiers for the World War. In such case the State retains all powers not inconsistent with the use being made by the government.

Fort Leavenworth R. Co. v. Lowe, 114 U. S. 525, at p. 539.

It cannot be said the taxing by the State of Arkansas of personal property of non-residents on those grounds, which were not in use at the time by the government, would interfere with use of the land for governmental purposes in any respect.

The United States has not exercised jurisdiction over Camp Pike, but on the contrary, it has turned over the lands to the State of Arkansas. The first license of May 15, 1922, was in force when the assessment was made (R. 79-81), and the second, which was executed November 30, 1922, is still in force. (R. 82-84.) The first provides: "That the State of Arkansas shall make such use or uses of the real estate turned over to the State as it shall see fit, provided that such use or uses do not interfere with its use for military purposes." (R. 81.) The second provides: "That the United States reserves the right to occupy for War Department needs any or all of the storehouses hereby licensed," and that "the State of Arkansas shall care for and protect all government property within the area turned over to the State" (R. 83), and that the commission may "salvage alternate buildings for the purpose of decreasing fire risk and of utilizing the material obtained therefrom to keep in repair the remaining buildings turned over to the State of Arkansas." (R. 84.)

The State has complete control of these lands in all matters except that their military use by the United States cannot be impaired, and this is their status under the law. It is certain the taxation of property of individuals living thereon cannot interfere with their military use by the Federal government. The custodian of the Camp Pike military reservation pays his personal taxes annually to Pulaski County, Arkansas, and has never objected to paying the same.

Defendant in error insists the reason for the rule is lack-

ing in this case and, therefore, the rule as contended for by plaintiff in error has no application here. And, then, too, the United States had abandoned the use of these lands as a cantonment prior to the levy of the tax in question.

The land comprising Camp Pike military reservation was acquired by the United States several years after the passage of the cession act of 1903 by the General Assembly of Arkansas. It is conceded by plaintiff in error that such jurisdiction as the United States has over Camp Pike military reservation is by virtue of the cession act. The cession act was in full force and effect when the United States acquired the land in question.

The cession act granted a benefit and the acquisition of the land by the United States without dissent as to the terms of the cession act shows the United States intended to acquire and use the land under the conditions imposed by the cession act.

Fort Leavenworth R. Co. v. Lowe, 114 U. S. 525.

The United States has not challenged the validity of the condition in the cession act impliedly reserving to the State of Arkansas the right to tax personal property of third persons located on Camp Pike military reservation.

Tax exemptions are never lightyl to be inferred.

Heiner, Collector, v. Colonial Trust Company, 275 U. S., 232.

It is well settled that a State may tax personal property situated on a government reservation within its limits and not belonging to the United States, or otherwise exempt from taxation.

26 R. C. L., 100.

The taxation of personalty of others than Indians upon an Indian reservation is permitted by a ruling of the Supreme Court of the United States. Cattle owned by other persons than Indians and grazing upon an Indian reservation within the territory of Oklahoma were assessed for taxation in Kay County, Oklahoma. The Indian reservation there under consideration had been attached to Kay County for judicial purposes by an order of the Supreme Court of Oklahoma prior to the date of the assessment. By authority of an act of the territorial legislature of Oklahoma the cattle grazing on the Indian reservation were assessed. Prior to the time

the taxes assessed were delinquent the owners began the removal of the cattle from the reservation and, in fact, beyond the limits of the territory of Oklahoma. Tax warrants were issued and served by the sheriff and the owners of the cattle filed actions asking an injunction preventing the collection of the taxes. The trial and appellate territorial courts held the tax levies made for territorial purposes and the county levy for court expenses were valid. All other county levies were held invalid. Both parties appealed to the Supreme Court of the United States. It was contended by the owners of the cattle the territory of Oklahoma was without power to tax the cattle grazing on the Indian reservation because exclusive jurisdiction over the Indians and their lands, and over all matters in any way affecting them, was in the United States.

This is the same contention which plaintiff in error makes here. It was also contended there, as here, that the taxation of the personal property located on the reservation was an invasion of the jurisdiction and control of the United States over the Indians and their lands. The court denied both contentions, and said:

> "It is claimed that the legislative assembly of the territory of Oklahoma was without power to enact the law of March 5, 1895, providing for the taxing of cattle grazing upon the Indian reservation, under leases granted by the Indians, because, both before and since the creation of said territory, exclusive jurisdiction over said Indians and their lands, and over all matters in any way affecting them, or in which they are interested, is in the United States.
>
> * * * * * *
>
> "And the contention is that, irrespective of the question whether said lands are, by the treaties, excluded from the limits and jurisdiction of the territory of Oklahoma, the taxation of cattle located for grazing purposes upon the reservations, under leases duly authorized by act of Congress, is a violation of the rights of the Indians, and an invasion of the jurisdiction and control of the United States over them and their lands.

"As to that portion of the argument which claims that, even if the Indians were not interested in any way in the property taxed, the territorial authorities would have no right to tax the property of others than Indians located upon these reservations, it is sufficient to cite the cases of *Railway Co. v. Fisher*, 116 U. S. 28, and *Maricopa & P. R. Co. v. Arizona*, 156 U. S. 347, in which it was held that the property of railway companies traversing Indian reservations are subject to taxation by the States and territories in which such reservations are located.

"But it is urged that the Indians are directly and vitally interested in the property sought to be taxed, and that their rights of property and person are seriously affected by the legislation complained of; that the money contracted to be paid for the privilege of grazing is paid to the Indians as a tribe, and is used and expended by them for their own purposes; and that if, by reason of this taxation, the conditions existing at the time the leases were executed were changed, or could be changed, by the Legislature of Oklahoma at its pleasure, the value of the lands for such purposes would fluctuate or be destroyed altogether, according to such conditions.

"But it is obvious that a tax put upon the cattle of the lessees is too remote and indirect to be deemed a tax upon the lands or privileges of the Indians. * * * * *

"It is further contended that this tax law of the territory of Oklahoma, insofar as it affects the Indian reservations, is in conflict with the constitutional power of Congress to regulate commerce with the Indian tribes. It is said to interfere with, or impose a servitude upon, a lawful commercial intercourse with the Indians, over which Congress has absolute control, and in the exercise of which control it has enacted the statute authorizing the leasing by the Indians of their unoccupied lands for grazing purposes.

> "The unlimited power of Congress to deal with the Indians, their property and commercial transactions, so long as they keep up their tribal organizations, may be conceded; but it is not perceived that local taxation, by a State or territory, of property of others than Indians would be an interference with congressional power. * * *
>
> "The taxes in question here were not imposed on the business of grazing, or on the rents received by the Indians, but on the cattle as property of the lessees, and as we have heretofore said that such a tax is too remote and indirect to be deemed a tax or burden on interstate commerce, so is it too remote and indirect to be regarded as an interference with the legislative power of Congress."
>
> *Thomas v. Gay*, 169 U. S., 264.

The *Thomas v. Gay* case, *supra*, was followed in the cases of *Wagoner v. Evans*, 170 U. S., 588; *Foster v. Pryor*, 189 U. S., 325, and *Montana Catholic Missions v. Missoula County*, 200 U. S., 118.

Counsel for plaintiff in error seek to point out a distinction which does not exist in the cases of *Thomas v. Gay*, 169 U. S., 264; *Wagoner v. Evans*, 170 U. S., 588; *Foster v. Pryor*, 189 U. S., 325. They say the rule announced in these cases is not applicable to this case for the reason the court was there dealing only with the power of a territory to tax property of persons other than Indians located on Indian reservations. It is contended the consent of a State could not have been given to any purchase because there was no State involved there. Counsel also contend the holding in the case of *Montana Catholic Missions v. Missoula County*, 200 U. S., 118, has no application to the facts here. The distinction which counsel would make here was not recognized by the United States Supreme Court in the first case. On this point the court said:

> "The unlimited power of Congress to deal with the Indians, their property and commercial transactions, so long as they keep up their tribal organizations, may be conceded; but it is not perceived that local taxation, *by a State or territory*, of

property of others than Indians would be an interference with congressional power."

Thomas v. Gay, 169 U. S., 264, at pp. 274-275.

The jurisdiction and control of the United States over the Indians and their lands is equally as absolute and exclusive as over lands purchased by the United States with the consent of the Legislature of a State for the erection of forts, etc. The taxation of personalty of others than Indians upon an Indian reservation being permitted by the express holding of the Supreme Court of the United States, we, therefore, insist the tax here under consideration is valid and enforceable.

Personal property located at Schofield Barracks, a military reservation of the United States in the territory of Hawaii, and owned by an officer of the United States Army, has been declared to be subject to taxation by the territorial government of Hawaii. This was the holding of the Supreme Court of the Territory of Hawaii. The property sought to be taxed there was an automobile. It was the contention of the officer of the United States Army that the automobile was located on the military reservation on tax day and, for that reason, was not taxable. The court held otherwise, however, and said:

"The only question is, whether or not the automobile in question is exempt from taxation by reason of its being upon a military reservation. * * * * It is contended on behalf of the petitioner that the Federal government having exclusive control of the said military reservation that persons and property thereon are not within the jurisdiction of the territory for the purposes of taxation. The same question has arisen in a number of cases, while in other cases questions of jurisdictions of a kindred nature have been raised in both civil and criminal cases. In *Territory v. Carter*, 19 Haw. 198, it was held that the territorial courts have jurisdiction of misdemeanors committed on lands reserved by the United States for naval purposes, citing in support of the rule *Territory v. Burgess*, 8 Mont., 57, and *Reynolds v. People*, 1

Colo., 179. The same rule was announced in *United States v. Bateman*, 34 Fed., 86, where the defendant was charged with an offense committed on the Presidio military reservation in California. Early Wyoming cases sustain the contention of the petitioner, but these decisions have been overruled by the Wyoming court. In *Noble v. Amoretti*, 11 Wyo., 230, it was held that an Indian trader, licensed by the government to trade with the Indians on an Indian reservation, subject to the jurisdiction of the Federal government, is subject to the jurisdiction of the State, and his property situated on the reservation subject to taxation. In *Thomas v. Gay*, 169 U. S., 264, it was held that the Legislature of Oklahoma Territory had jurisdiction to provide for the taxation of property of persons other than Indians situated on Indian reservations, and that such statute does not conflict with the provisions of the Federal Constitution. This decision was approved in *Wagoner v. Evans*, 170 U. S., 588; in *Foster v. Pryor*, 189 U. S., 325, and in *Catholic Missions v. Missoula County*, 200 U. S., 118, 129. See also *Gay v. Thomas*, 5 Okla., 1, and the same case, 7 Okla., 184. The Supreme Court of Arizona held in *Territory v. Delinquent Tax District*, 3 Ariz., 302, that private property of persons other than Indians upon an Indian reservation is subject to taxation, although that of Indians is not.

"Lands within Indian reservations are within the exclusive jurisdiction of the Federal government, and persons other than Indians cannot use such lands or lease them without permission from the Federal government, yet it has been held that the civil authorities of a State or territory may execute process upon persons other than Indians on such reservations, unless there is some treaty provision excluding the jurisdiction of the State or territory within which such reservations are located. *See Langford v. Monteith*, 102 U. S., 145; *Utah & N. R. Co. v. Fisher*, 116 U. S., 28, and a number

of later cases. The solicitor general, in an elaborate and interesting opinion, approved by the attorney general, reported in Opinions of Attorney General, Vol. 26, p. 91-99, has followed the rules heretofore mentioned and held that property upon the Subig Bay naval reservation was not exclusively within the jurisdiction of the Navy Department of the United States and is subject to taxation by the civil authorities.

"The Organic Act, Sec. 55, grants to the Territory the power to legislate upon all rightful subjects of legislation, including that relating to taxation of person and property. Section 1236, R. L., provides for the annual taxation of all real and personal property within each taxation district. The military reservation, upon which Schofield barracks are located, is within the first taxation district, of which the respondent is asessor and collector. We have no territorial statute, and Congress has passed none, to which our attention has been called, exempting automobiles or other private property on military reservations from taxation. Congress undoubtedly has the power to enact a statute exempting automobiles owned by persons in the army from taxation, when kept upon a military reservation in a Territory, but it has not done so. In the absence of legislation, Federal or territorial, exempting the automobile in question from taxation by the Territory of Hawaii, we hold that it is subject to taxation under the statutes of the Territory."

Cassels v. Wilder, 23 Haw., 61, at pp. 62-65.

Counsel comment at length on the case of *Cassels v. Wilder, supra*. It is said the authority for the holding in that case was an opinion of the solicitor general, which was approved by the attorney general. A careful examination of the *Cassels v. Wilder* case, however, refutes this statement. The holding in the cited case was based upon the authority of decisions of the Supreme Court of the United States and courts of last resort of the different States and territories of the United States.

The Supreme Court of Oklahoma has held the taxing officials of Comanche County, Oklahoma, have the power to levy and collect taxes on personal property belonging to private individuals and located on the Fort Sill military reservation, which is wholly within the boundaries of Comanche County and constitutes a part thereof. It also held the legislative power of Oklahoma territory extends to all rightful subjects of legislation just as the legislative power of the State of Arkansas covers all proper matters of legislation. Rice, and another, were partners in the cattle business in Oklahoma territory. They owned quite a lot of cattle, which were located on the Fort Sill military reservation, in Comanche County, Oklahoma. The taxing officers assessed these cattle for territorial, county, township and school district purposes. The owners of the cattle instituted an action against the sheriff of Comanche County, Oklahoma, praying that he be restrained from levying a tax warrant in his hands on the property of plaintiffs. The trial court granted an injunction against the collection of the school district taxes on the ground that none of the cattle owned by plaintiffs had been within the school district, but denied the injunction as to the taxes for other purposes. The plaintiffs thereupon sued out a writ of error in the Supreme Court of Oklahoma. The court said:

> "The sole contention of the plaintiffs is that, inasmuch as these cattle were located on a military reservation of the United States, even though such reservation is within an organized county of Oklahoma, they cannot be taxed under the territorial laws, asserting that a military reservation is under the sole legislative control of the United States. We have read counsel's brief, and while it is true that, as long as Oklahoma remains a territory, Congress may legislate as to all matters pertaining to this reservation and exclude the territorial authorities from exercising any control thereof, it has not done so. By section 6 of the Organic Act of the territory of Oklahoma, it is provided: 'That the legislative power of the territory shall extend to all rightful subject of legislation, not inconsistent with the Constitution and laws of the United States, but no

law shall be passed interfering with the primary disposal of the soil, no tax shall be imposed on the property of the United States, nor shall the lands and other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right of private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value.' Under this express grant of power from Congress, the territory may subject all property within the territory to taxation except the property of the United States. It is immaterial where the property is located. If it is not the property of the United States, the Legislature may require it to bear its just proportion of the burdens of government. A military reservation in a territory is no more under the legislative control of Congress than is an Indian reservation; and it has been expressly held by the Supreme Court of the United States that the territory may tax property on an Indian reservation, even though it is not located within an organized county, but only attached to an organized county for judicial purposes. *Thomas v. Gay*, 169 U. S., 264, 18 Sup. Ct. 340, 42 L. Ed. 740; *Polson v. Purcell*, 4 Okla., 93, 46 Pac. 578; *Wagoner v. Evans*, 170 U. S., 588, 18 Sup. Ct. 730, 42 L. Ed. 1154; *Stell v. Territory*, 4 Okla., 497, 46 Pac. 1117; *Truscott, Co. Treas., v. Hurlbut Land & Cattle Company*, 73 Fed., 60, 19 C. C. A., 374; *Foster v. Pryor*, 189 U. S., 325, 23 Sup. Ct. 549, 47 L. Ed. 835; *Atchison, T. & S. F. R. Co. v. Bryan*, 11 Okla., 357, 66 Pac. 348. See also *Ft. Leavenworth R. Co. v. Lowe*, 114 U. S., 525, 5 Sup. Ct. 995, 29 L. Ed. 264.

"Under the laws of the territory of Oklahoma the property in question is subject to taxation in Comanche County. The property of the United States located on this reservation or anywhere else in the territory cannot be taxed. The territory is expressly prohibited as to such taxation by the Or-

ganic Act. But should Congress exclude the territory from taxing the property of the plaintiff simply because it is located on this reservation? It did not intend to do so, nor has it done so. Counsel have overlooked the fact that Congress has not only exclusive legislative control over military reservations in the territories, but it has legislative control of the territories themselves. The Fort Sill military reservation is within the organized county of Comanche and constitutes a part thereof. The persons and property within such reservation have the protection of the laws of the territory, and it is only equitable that the property therein not belonging to the United States should pay a part of the expenses of the same. If Congress had intended that the property on this or other reservations in the territory should not be taxed, it would have so declared, as it did with reference to property of the United States and property belonging to certain Indians. As the property in question was within an organized township of an organized county of the territory, the power exists to exact taxes for all three purposes, to-wit: territorial, county and township."

Rice v. Hammonds, 19 Okla., 419, 91 Pac. 698.

The case of *Rice v. Hammonds, supra*, was cited in *Concessions Co. v. Morris*, 186 Pac. 655, relied on by plaintiff in error, and a wrong construction placed on it there. The fact that the government had control of the territory, as well as of the reservation, was not important. The power of taxation was surrendered by the government to the territory, which thereafter had such power as much so as the State of Arkansas has, where, as here, it is not surrendered. The Supreme Court of Oklahoma held the Fort Sill military reservation was within Comanche County and was a part of it. It also held the persons and property within such reservation had the protection of the laws of the territory and it was only equitable that the property therein not belonging to the United States should pay a part of the expenses of same.

The territory of Oklahoma had power to tax all property within its limits save that of the United States, which was exempted. Here the State of Arkansas has the power to tax all property within its limits except that exempted. The question there was, as it is here, whether the reservation was within the territorial limits, and it was held to be within such limits. The case is on all fours with this one, so far as taxing personal property on Camp Pike is concerned.

The Supreme Court of Nebraska has held that a post trader at a military reservation and under the protection and control of the War Department, is not exempt from assessment for taxation by the county and State within which the reservation is located. The cession act of Nebraska ceded jurisdiction over the military reservation just as the cession act of Arkansas did. There was a reservation of the right to serve process, either civil or criminal, by the State of Nebraska, except so far as such process might affect the real and personal property of the United States. In discussing whether the property of the post trader was taxable by the State of Nebraska, the court said:

> "The question presented is, was the property and tradership of the defendant in error, located and confined exclusively within the reservation and military post of Fort Niobrara, subject to taxation by the county of Cherry, or the State of Nebraska? The second section of the act cited expressly reserves concurrent jurisdiction with the United States in and over the military reservation for all civil process in all cases, and such other criminal or other process as may issue under the laws or authority of this State against any person charged with crime or misdemeanor committed in this State, and may be executed as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States. It is not apparent that this proceeding affects the real or personal property of the United States."
>
> *County of Cherry et al. v. Thacher*, 32 Neb., 350, 49 N. W. 351, at p. 352.

The facts of the Nebraska case more strongly warranted the exemption from taxation of the property of the post

trader than the facts here warrant the exemption from taxation of plaintiff in error. In the Nebraska case there was no question about the permanency of the location of the property taxed on the military reservation. But here the property sought to be taxed was removed from the military reservation at Camp Pike, Arkansas, just as quickly as it was possible to transport it to the Terminal Warehouse in the City of Little Rock, Pulaski County, Arkansas.

In a recent Virginia case decided by the Virginia Supreme Court of Appeals on January 14, 1926, it was held a mercantile business carried on in a railroad station situated on land ceded to the United States for an approach to an interstate bridge was subject to a State license tax. In the Virginia case it was conceded by the court that the State could not tax land or buildings thereon which had been ceded by the State of Virginia to the United States. However, the court there expressly held that personal property situated in buildings upon said land and owned by third parties was liable to be taxed by the State and county in which it was found.

The General Assembly of Virginia ceded the land to the United States for abutments and approaches of a proposed bridge across the Potomac river. The land was purchased by the United States with the consent of the Legislature of the State of Virginia. The legislative enactment ceding jurisdiction retained the right to State authorities to execute legal process on the land ceded and also provided the land acquired by the United States and the abutments and approaches built for the bridge should be exempt from taxation so long as the United States should continue to be the owner of the land and the erections thereon.

The question involved in the case was said, by the court, to be as follows:

> "The question here at issue, however, is whether the land in Arlington County, purchased for an approach to the Key bridge, by the United States, with the consent of the State of Virginia, is land over which the Congress has exclusive legislative jurisdiction, just as it has over the District of Columbia and over lands purchased by consent of the State for the erection of forts, magazines, ar-

senals, dockyards and other needful buildings. If it can be so held, then Congress having the exclusive legislative power, the State of Virginia has no jurisdiction and cannot impose a fine upon the accused for refusing to pay a State license tax for transacting business in that territory."

In discussing the liability of personal property of third persons on such land to taxation, the court said:

> "That the right of a State to tax the property of others located upon said lands owned by the United States, although it cannot tax such lands, will not be held to be abandoned by the State except for the most compelling reasons, is quite manifest from several decisions of the Supreme Court of the United States."
>
> *Nikis v. Commonwealth*, 131 S. E. 236, 46 A. L. R. 219 (Virginia).

The Lowe case, *supra*, was relied upon by the plaintiff in error in claiming an exemption from taxation in the Virginia case as it is here by plaintiff in error, but, under the facts there the Supreme Court of Appeals of Virginia refused to apply the rule contended for by Nikis. And we submit, under the facts of this case, the rule announced in the Virginia case ought to be followed here. To apply the rule as argued for by plaintiff in error would be unreasonable under the facts of this case.

Numerous decisions of the United States Supreme Court are cited in the Virginia case.

It would be foolish in the extreme for the State of Arkansas to cede away its power to tax individual property on reservations of the United States, and all presumptions are indulged that the State has not thus given away any part of its taxing power. The power to tax personalty owned by individuals on Camp Pike grounds is clearly shown by the cession act of 1903, which releases the power of the State to tax property thereon only as to real property and improvements owned by the United States.

The Supreme Court of Montana has held that the fact that an Indian post trader is licensed by the government to trade with Indians does not exempt his stock in trade located

on an Indian reservation from State and county taxation, such trader being a mere licensee and not an agent of the government. Cosier and another, partners, as plaintiffs, filed an action against McMillan, as county treasurer of Valley County, Montana, as defendant, asking the defendant be restrained from collecting taxes on property situated on the Fort Peck Indian reservation. Plaintiffs were duly licensed Indian post traders on the reservation named. The trial court held the personal property of plaintiffs was subject to taxation, although located on the Indian reservation. Plaintiff appealed to the Supreme Court of Montana and the cause was affirmed. The court said:

> "Although the people of the State of Montana agreed, as a condition to the admission of the State into the Union, to disclaim any right or title to all lands lying within the limits of the State owned or held by any Indian tribes, and that until title thereto shall be extinguished by the United States the same shall be and remain subject to the disposition of the United States, and under the absolute jurisdiction and control of Congress, still Indian reservations are not without the jurisdiction of the State for the purposes of taxing personal property, in which the Indians are not interested, held upon such reservations. In *Truscott v. Cattle* Co., 19 C. C. A., 374, 73 Fed. 60, the United States Circuit Court of Appeals said, in reference to taxing cattle upon an Indian reservation: 'We are unable to see any good reason why the authority of the State and its subordinate sub-divisions, the counties, may not also include the taxation of all such personal property found within their geographical limits, although upon the reservation in question, provided, as in this case, the Indians are in no way interested in it.' Appellants, however, would have the courts except their property from the operation of the taxing power of the State because it constitutes the stock in trade of an Indian post trader, and is used in trading with the Indians under a license obtained from the government of the United States; or, in other words, appellants

contend that the presence of an Indian trader with a stock of goods on an Indian reservation is an agency of the general government to carry out its treaty with the Indians, and is expressly authorized by law. We cannot concur in this argument. There was a time when the government furnished the merchandise traded to the Indians, and when the person who dealt out the property so furnished acted as an agent of the United States, which made the commerce so conducted with the Indians an agency of the government. But long ago (in 1834) that policy was changed, and now any loyal citizen is authorized to trade with an Indian tribe upon giving a bond conditioned to faithfully observe all laws and regulations made for the government of trade and intercourse with the Indian tribes. Rev. St. U. S., Sec. 2128 *et seq.* So that at present an Indian post trader is a licensee with authority to trade with the Indians, required, of course, to observe the laws and regulations appertaining to such intercourse—a privileged trader on his own account, responsible to no one except for the observance of the aforesaid laws and regulations and for violation of the same. His real connection with the government seems to be that he is privileged, upon conditions and under regulations, to go onto the reservation to seek as customers the wards of the United States living upon the Indian reservation, permission to trade with whom upon their reservation can only be obtained from the guardian government, which reserves the right to revoke the license or terminate the privileges at its pleasure. Id., Sec. 2131. We are unable to see how such a relationship between a citizen and the general government makes the citizen enjoying the privilege an agent of the United States, or how his goods, in which neither the government nor the Indians have any interest, are a Federal agency or means employed by the government for the execution of its powers, the taxation of which by the State is forbidden by implications of the Constitution of the

United States; provided, there is no unjust discrimination between the property of the citizen situate upon the reservation and other like kinds taxed by the State. *Thompson v. Railroad Co.*, 9 Wall. 579; *Railroad Co. v. Peniston*, 18 Wall. 5; *Central Pac. R. Co. v. California*, 162 U. S. 91, 16 Sup. Ct. 766; *Moore v. Beason* (Wyo.), 51 Pac. 875; *Thomas v. Gay*, 169 U. S., 264, 18 Sup. Ct. 340; *Wagoner v. Evans*, 170 U. S. 588, 18 Sup. Ct. 730.

Cosier et al. v. McMillan, county treasurer, 22 Mont. 484, 56 Pac. 965, at p. 966.

The Supreme Court of Wyoming has held that personal property, including a stock of merchandise of a licensed Indian trader, located within the limits of the Shoshone Indian reservation, is subject to taxation by the State in the same manner and to like extent as all other property within the county. It was also held in that case that the tax imposed was not one upon an agency of the United States, and further that it did not place a burden upon commerce with an Indian tribe.

The action was instituted by Noble and others, as plaintiffs, against the county treasurer and collector of taxes of Fremont County, Wyoming, as defendant, seeking to restrain the defendant from selling personal property of plaintiffs to satisfy delinquent personal property taxes. The trial court reserved certain questions and requested the Supreme Court to answer them. The reserved questions of interest here were as follows:

First. Under the laws of the State of Wyoming, is personal property located upon and within the limits of the Shoshone Indian reservation in Fremont County, Wyoming, which personal property is used by the plaintiffs in their business and occupation as licensed Indian traders in the manner set forth in the agreed statement of facts in this case, subject to taxation in the county of Fremont, State of Wyoming?

Second. Are the plaintiffs exempt from taxation in the county of Fremont, State of Wyoming, by reason of their being licensed Indian traders in said reservation, engaged in the business of dealing with the Indians on that

reservation, and also with white people living on and off said reservation, and those traveling through and across said reservation, such as freighters and others?

In deciding the property located within the limits of the Indian reservation was taxable by the State, the court said:

> "Questions 1 and 2 relate to the validity of the taxes in question. The jurisdictional authority of the State to tax property located upon the Shoshone Indian reservation has been before this court in several cases.
>
> "The first case is that of *Moore v. Board of Commissioners of Sweetwater County*, 2 Wyo., 8. In that case the taxing power of the State over property on such reservation was denied. The same conclusion was reached in *Fremont Co. v. Moore*, 3 Wyo., 200, 9 Pac. 438. In both cases not only was the right denied to tax the merchandise of an Indian trader, but also the authority to tax other property of the trader on the reservation, not necessarily connected with his business as such trader.
>
> "In the case first above cited the decision was based upon the broad ground that the reservation was without the taxing jurisdiction of the territorial authorities. And the court in the later case may be said to have been influenced by similar reasons, though it was held in that case that the distraint of personal property on the reservation by a tax collector would, as to the merchandise of the trader, amount to an infraction of the policy of the government as set forth in its treaty with the Indians, and, as to other property, would result in an infraction of the treaty. So far as concerns property other than goods and personal property of an Indian trader, the cases above mentioned were directly overruled by the decision of this court in the case of *Torrey v. Baldwin*, 3 Wyo., 430, 26 Pac., 908, wherein it was held that certain cattle owned by one not an Indian trader, kept and located on the reservation, were subject to State

taxation, and the theory that the reservation was outside of the taxing jurisdiction of the State was shown to be unsound. In the more recent case of *Moore v. Beason*, 7 Wyo., 292, 51 Pac., 875, we held that cattle and horses belonging to a licensed Indian trader, and kept and grazed upon the reservation with the consent of the Indians, who were paid for the privilege, were subject to State taxation. The decisions of other courts are in harmony with our conclusions in *Torrey v. Baldwin* and *Moore v. Beason*, and the power of the State to tax property within the limits of Indian reservations and belonging to persons not Indians, is now well settled. *Thomas v. Gay*, 169 U. S., 264, 18 Sup. Ct. 340, 42 L. Ed. 740; *Wagoner v. Evans*, 170 U. S. 588, 18 Sup. Ct. 730, 42 L. Ed. 1154; *Truscott v. Hurlbut, L. & C. Co.*, 19 C. C. A. 374, 73 Fed. 60; *Gay v. Thomas* (Okla.), 46 Pac. 578. The cases of *Thomas v. Gay* and *Wagoner v. Evans, supra*, involved the taxation of cattle kept within reservations in Oklahoma under leases with the Indians, duly authorized by act of Congress, and the tax was upheld. The court held that such tax did not constitute an invasion of the jurisdiction and control of the United States over the Indians and their lands, and it was said to be obvious that 'a tax put upon cattle of the lessee is too remote and indirect to be deemed a tax upon the lands or privileges of the Indians.' * * * *

* * * * * "In the case of reservation in question, whether the fact is material or not, the traders are in competition with other merchants in towns and places off the reservation, in their dealings with people other than Indians. There should be some good reason, therefore, if they are to be exempted from bearing their share of the burdens of government in the shape of taxation. We do not think that the taxation of the goods of the Indian trader is a tax upon an agency of the general government, in the sense in which such a tax is prohibited. We are unable to perceive how the tax

operates to hinder or defeat the operations of the government. Should it be conceded, however, that the trader stands in the relation of an agent to the government, we would not be inclined to regard a tax upon his property as having the necessary effect to deprive him of the efficient exercise of his power to serve the government as it is intended he shall serve it; having in mind the nature and extent of his privileges, and the purpose of the license under which he carries on his business. *R. R. Co. v. Peniston*, 18 Wall. 5, 21 L. Ed. 787.

* * * * *

"Although counsel for plaintiffs do not seem to assail the validity of the taxes in question upon the ground that they amount to a regulation of commerce with Indian tribes, that question is deserving of some attention, especially as the early case of *Foster v. Board, supra*, was decided on that ground by the Minnesota court. * * * His right to do so cannot be interfered with by the State. But is that right interfered with by a tax upon his property that is laid equally upon all other property of like kind? While it is true that a tax upon any article that may become the subject of commerce, in a sense, affects commerce itself, that fact does not determine that the tax is upon commerce. Although the effect of the tax may be an increase of the expenses of the trader, we think it cannot for that reason be justly said that the tax amounts to a regulation of commerce. * * * It is manifest that, to trade with the Indians, they must have goods to sell. To buy from the Indians, they must have capital to be so employed. Yet how would a tax upon such capital constitute a tax upon a regulation of commerce with the Indians?

"It appears to us that the reasoning in the case of *Thomas v. Gay, supra*, is applicable to, and largely decisive of, this question. Answering the argument that the Indians were directly interested in the property sought to be taxed, for the reason

that they received compensation from the owners of the cattle for the privilege of grazing them on the reservation, it was said that the tax was too remote and indirect to be deemed a tax on the lands or privileges of the Indians. The tax in that case was also attacked on the ground that it conflicted with the power of Congress to regulate commerce with the Indian tribes; that it placed a servitude upon a lawful intercourse with the Indians, over which Congress has absolute control. The court, however, said: 'The unlimited power of Congress to deal with the Indians, their property and commercial transactions, so long as they keep up their tribal organizations, may be conceded; but it is not perceived that local taxation, by a State or territory, of property of others than Indians, would be an interference with congressional power.' It was further said by the court that, 'The taxes in question were not imposed on the business of grazing, or on the rent received by the Indians, but on the cattle, as property of the lessees, and, as we have heretofore said, that as such a tax is too remote and indirect to be deemed a tax or burden on interstate commerce, so it is too remote and indirect to be regarded as an interference with the legislative power of Congress.' This holding of the learned court applies with full force, it seems to us, to the case in hand. The tax upon the stock of goods of the trader is too remote and indirect to be deemed a tax or burden upon commerce with an Indian tribe. Indeed, the contention that the power of Congress was interfered with in the case of the taxation of cattle kept on the reservation by the consent and to the benefit of the Indians, with the approval of Congress, presented a stronger ground for invoking the constitutional provision as to the exclusive right of Congress to regulate commerce with the Indian tribes than is presented by the facts in the case at bar."

Noble et al. v. Amoretti, 11 Wyo. 230, 71 Pac. 879, at pp. 880-882.

The Supreme Court of Michigan held territory, the jurisdiction over which had been ceded by the State to the United States for canal purposes, was not outside of the State so far as taxation of private personal property thereon was concerned. By an act of its legislative assembly the State of Michigan had ceded all jurisdiction and control over certain land to the United States for a canal and public works thereon, reserving jurisdiction only for the service of civil and criminal process. This act was construed not to cede exclusive jurisdiction to such an extent as to interfere with the taxation of private personal property located on such land by the State of Michigan and her subordinate taxing agencies. The court said:

> "Upon the main proposition as to whether the tax was rightfully laid, we are to consider whether the jurisdiction of the State extended for that purpose to any personal property situated and used on the ceded lands. If the territory is beyond the jurisdiction of the State and within the exclusive jurisdiction of Congress, as the trial court held, then the judgment is right. * * * * *
>
> "In *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S. 525, 5 Sup. Ct. 995, 29 L. Ed. 264, and in *Chicago, R. I., etc., R. Co. v. McGlinn*, 114 U. S. 542, 5 Sup. Ct. 1005, 29 L. Ed. 270, the principles affecting a construction of the grant were exhaustively considered by the Supreme Court of the United States, with conclusions which, applied here, require, we think, a reversal of the judgment. As a fact in both cases, it appeared that the State of Kansas ceded to the United States exclusive jurisdiction over and within the territory known as the Fort Leavenworth reservation in that State, the title to which was in the United States, saving the right of the State to serve civil and criminal process within said reservation, and saving further to said State the right to tax railroad, bridge and other corporations, their franchises and property, on said reservation. The State levied a tax on the track, right-of-way, franchises, roadbed, telegraph line and instruments connected therewith on

the reservation, the tax was paid under protest, and the suit was brought to recover the money so paid. It was the contention of the railroad company that the act of cession operated under the Constitution of the United States to vest in the United States exclusive jurisdiction over the reservation, and that the last saving clause, being inconsistent with the result, should be rejected. This contention the court rejected, holding: 'That a building on a tract of land owned by the United States used as a fort, or for other public purposes of the Federal government, is exempted, as an instrumentality of the government, from any such control or interference by the States as will defeat or embarrass its effective use for those purposes. But, in order that the United States may possess exclusive legislative power over the tract, except as may be necessary to the use of the building thereon as such instrumentality, they must have acquired the tract by purchase, with the consent of the State. (Article 1, Section 8, Subd. 17.) This is the only mode prescribed by the Federal Constitution for their acquisition of exclusive legislative power over it. When such legislative power is acquired in any other way, as by an express act ceding it, its cession may be accompanied with any conditions not inconsistent with the effective use of the property for the public purposes intended.' * * * * * * * *

"In the case at bar, there is not, in terms, as there was in the case of the Fort Leavenworth reservation, a cession to the United States of exclusive jurisdiction and, as the cession was not made upon purchase by the United States and consent of the State thereto, there is no implication of a cession of exclusive jurisdiction except as the implication may be raised upon the proviso, which, however, reserves no legislative jurisdiction. And the jurisdiction expressly reserved may be accounted for upon the theory that, for whatever reason the cession was made, it was sufficient to confer exclusive jurisdiction in the United States to control the canal, any

buildings and works connected with it, and with its operation for the purposes of its operation. There was no occasion to the State to cede exclusive jurisdiction to the United States, no apparent reason for denying to the State such jurisdiction, legislative and other, as did not interfere with the control by the United States of the property transferred for the purposes of the transfer.

"We construe the grant itself as a cession of less than exclusive jurisdiction. * * * In this view, the ceded territory is not out of the State of Michigan so far as the operation of its tax laws is concerned, but is within the State. The tax levy in question was properly made, and the tax was a lawful one."

Oscar Daniels Co. v. City of Sault Ste. Marie, 175 N. E. 160, at pp. 163-164 (Michigan).

It will be noticed the Arkansas cession act of 1903, like that of Michigan, does not give exclusive jurisdiction in words and does not expressly give any legislative jurisdiction at all. The Arkansas cesson act goes further than the Michigan act and regulates the question of taxation fully, thus setting at rest the right of the State to impose the tax here in question. If in Michigan such right of taxation can be inferred from the cession not being exclusive, certainly there should be no trouble here in imposing the tax which is authorized by clear reservation.

The Supreme Court of Arkansas in 1892 held the estate of a lessee of land belonging to the United States and within the Hot Springs reservation was not exempt from taxation. This decision was prior to the cession of jurisdiction by the State of Arkansas to the United States over the Hot Springs reservation. The Hot Springs reservation, like the Fort Leavenworth reservation, was a part of the public domain of the United States when Arkansas was admitted to statehood, and the United States did not retain jurisdiction over the Hot Springs reservation when Arkansas was admitted as a State. Subsequent to the decision, the General Assembly of Arkansas passed a cession act ceding jurisdiction over the Hot Springs reservation to the United States. This act was approved February 21, 1903. It is not to be

confused with the cession act under consideration in the instant case, which was approved April 29, 1903. The Arlington Hotel Company cases, cited by counsel for plaintiff in error in their brief, fall within the provisions of the cession act of February 21, 1903, and not within the terms of the act of April 29, 1903. In holding the estate of the lessee of land belonging to the United States and within the Hot Springs reservation taxable, the Supreme Court of Arkansas said:

> "The interest of the lessee in the land is not the property of the United States, and it is not a means employed by the government to obtain a governmental end. The power to tax that interest does not involve, therefore, the power to destroy or disturb any interest of the United States government. * * * * * * *
>
> * * * * * * "All property in Arkansas belonging to individuals is subject to taxation except such as is specifically exempted by the Constitution. Nothing else is or can be made exempt. * * * * The interest which the appellant acquired by his lease was property, and is not exempt under the law. It was the duty of the assessor to return it for taxation."
>
> *Ex parte Gaines*, 56 Ark., 227, 19 S. W. 602.

The case of *Concessions Company v. Morris*, 186 Pac. 655, mainly relied upon by the appellee, may easily be distinguished from the instant case in that the Legislature of the State of Washington consented, at the time, to the acquisition by the United States of the specific tract for the specific purpose proposed, thus coming within Section 8, Article 1, and its power over the land could not be otherwise than unconditional and absolute. That the court so held is apparent from its opinion, which says: "A territory has been created which resembles that of the District of Columbia, the only reservation being that the State can serve civil and criminal process," which provision is held not to be a condition. The instant case does not come within Section 8, Article 1, but requires a cession of the State which may have conditions attached expressly or by impli-

cation, according to the provisions of the cession, and such conditions are found here.

The case relied upon by plaintiff in error also held, by inference, that the property of Concessions Company might be assessed for taxation at Seattle, in King County, Washington, that being the place of its residence.

CONCLUSION.

Defendant in error earnestly insists the decree of the Supreme Court of Arkansas should be affirmed.

Respectfully submitted,

H. W. APPLEGATE,
Attorney General of Arkansas;

SAM T. POE,

TOM POE,
For Defendant in Error.

APPENDIX

AN ACT to Abolish Township Boards of Assessment and Valuation and to Create a Board of Equalization in All Counties of the State Having a Population in Excess of 75,000 Persons.

Section

1. County equalization board. When authorized. Qualification.
2. Time of meeting.
3. Organization of board.
4. Clerk of board. Compensation.
5. Compensation of board members.
6. Duty of clerk. Rules for equalization.
7. Appeals.
8. Time of appeals.
9. Notice to tax payers.
10. Powers of equalization board.
11. Repealing clauses.
12. Emergency clauses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

Section 1. County Equalization Boards—When Authorized—Qualification. In all counties of Arkansas having a population, according to the last Federal census, in excess of 75,000 persons, the county judge on or before the first day of July of each odd numbered year shall appoint a board of equalization to be composed of nine intelligent citizens, real estate owners and qualified electors, to be selected from different portions of the county, who shall hold their office for two years. Any vacancy occurring in said board shall be filled by appointment by the county judge.

Section 2. Time of Meeting. The county board of equalization shall meet annually on the first Monday in August, at the office of the clerk of the county court, and each member shall take the oath of office prescribed by Section 20 of Article XIX of the Constitution of the State of Arkansas, and further that he will fearlessly, impartially and faithfully equalize the value of all property assessed. The board shall exercise its functions as a board in the equalization of prop-

erty until the fourth Wednesday of October; provided, special sessions may be held upon the order of the county judge. The president of the board shall have power to administer oaths to witnesses apearing before the board.

Section 3. Organization of Board. At the first meeting of the said board it shall organize by electing one of its members president. The equalization board may also be divided into working groups, to each of whom may be assigned the task of equalizing the property of each city of the first class, or of the property of rural or country districts, subject to revision and concurrence by the entire board sitting in banc.

Section 4. Clerk of Board—Compensation. The clerk of the county court shall be ex-officio clerk of the equalization board and shall keep an accurate journal of its proceedings. He shall receive as compensation five dollars ($5.00) per day for each day said board may remain in session.

Section 5. Compensation of Board Members. Each member of the board of equalization shall receive the sum of five dollars ($5.00) per day for each day engaged in the discharge of his official duties.

Section 6. Duty of Clerk—Rules for Equalization. The clerk shall lay before the board the returns of the real property made by the assessor and said board shall proceed to equalize the valuation of such real property so that each tract or lot shall be entered upon the tax books at its true value in money. For this purpose the board shall observe the following rules:

(1) It shall raise the valuation of such property as in the opinion of the board has been returned below its true value to such sum or amount as may be deemed its true value. Members of the board may actually enter upon and view any property as to the true value of which they may not be fully satisfied.

(2) It shall reduce the valuation of such property as in the opinion of the board has been returned above its true value as compared with the average valuation of real property in such county, or city, having due regard to the relative situation, quality of soil, improvements and natural advantages.

Section 7. Appeals. Any party aggrieved by any action of the equalization board may appeal therefrom to the county court by application in writing, in the time hereinafter provided. Any taxpayer of the State may appear before the board and object to the assessment of the property of another taxpayer either as made by or before the assessor or as fixed by said board. From the decision of the board, with reference thereto, such objecting taxpayer may appeal to the county court. From the final order of the county court, such objecting taxpayer or a taxpayer appealing from the board's action upon his own property, may further appeal to the circuit court and thence to the Supreme Court, under the rules and procedure applicable to other civil cases. Such appeals shall be prosecuted in the name of the aggrieved taxpayer appealing from his own assessment and in the case of a taxpayer objecting to the assessment of another's property in the name of the State of Arkansas on relation of the objector.

Section 8. Time of Appeals. All appeals taken from the board of equalization shall be taken to the October term of the county court and if taken after the regular term of said court has convened, shall be filed in said court before the fourth Wednesday in October; provided, that if any special session is held by the board, appeals may be taken from orders made thereat and heard in the term of court in which such special sessions may be held; provided, further, no appeal shall be heard after April 10th following the said October term of court.

Section 9. Notice to Tax-payer. The board of equalization in every instance where it raises the valuation of any property shall give notice by postal card or otherwise through the mail of such increase to the owner of the property or his agent, said notice to state the valuation returned by the assessor and that fixed by the board, and advising the addressee that he may appear before the county court on the second Wednesday of September next following the session of said board and show cause, if any exists, why the valuation of said property shall not be raised; provided, the county court may call a special session of the board at any time between the first day of January and the tenth day of April, by giving the members five days' notice.

Section 10. Powers of Equalization Board. The equalization board when in regular or special session shall have power to examine witnesses with respect to any matter under investigation, to hear complaints as to under-valuation or over-valuation of property, to equalize assessments by adding to or taking from the valuation of any real or personal property, including intangibles, within the county, to assess the property of any person, firm or corporation omitted from the tax rolls by the assessor, and to correct obvious errors occurring in the assessments. For the purpose of this equalization the board and members thereof shall have free access to the county records, and it is made their duty to carefully examine said records in making such investigation. One-half of the expense of the real estate assessment shall be paid by the State, and one-half by the county, and the county court shall draw its warrant on the county treasurer for one-half of the amount due to the assessors, as it shall, at the same time, certify to the Auditor the amount due to said assessor on the part of the State, the same being one-half of the total amount due the said assessor; thereupon the Auditor shall draw his warrant on the State Treasurer for said amount.

Section 11. Repealing Clause. All laws or parts of laws heretofore enacted and now remaining in force, which are in conflict herewith are hereby repealed.

Section 12. Emergency Clause. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and the same shall take effect and be in force immediately after its passage.

Approved March 28, 1919.

(Acts of Arkansas, 1919, General, pp. 348-353.)

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

No. [redacted] 2

SURPLUS TRADING COMPANY ..... *Plaintiff in Error*

v.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS ..... *Defendant in Error*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

MOTION TO SUBSTITUTE AS PARTY SUCCESSOR IN OFFICE OF DEFENDANT IN ERROR

HAL L. NORWOOD,
Attorney General of Arkansas;

SAM T. POE,
TOM POE,
For Defendant in Error.

(33,118)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

No. 33

SURPLUS TRADING COMPANY ..... *Plaintiff in Error*

v.

J. M. HAYNIE, AS SHERIFF AND EX-OFFICIO COLLECTOR OF TAXES FOR PULASKI COUNTY, ARKANSAS ..... *Defendant in Error*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

MOTION TO SUBSTITUTE AS PARTY SUCCESSOR IN OFFICE OF DEFENDANT IN ERROR

The defendant in error, J. M. Haynie, as Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas, by his counsel of record, moves the Court for an order substituting as a party the successor in office of the defendant in error, and for reasons therefor states:

I.

On April 8, 1929, J. M. Haynie, the defendant in error, tendered his resignation as Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas, to the Governor of the State of Arkansas. The resignation was accepted by the Governor of the State of Arkansas on the same day

it was tendered. R. A. Cook was, on April 8, 1929, appointed as Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas, by the Governor of the State of Arkansas to serve for the unexpired term, succeeding J. M. Haynie, resigned. R. A. Cook accepted the appointment and thereafter qualified as required by the statutes of the State of Arkansas, and is now the duly qualified and acting Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas.

II.

The above entitled action is now pending in this Court, and has not yet been determined. There is a substantial need for the continuing and maintaining of this cause and obtaining an adjudication of the question involved.

III.

The federal statute under which the substitution of R. A. Cook, as Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas, as defendant in error, in this cause is asked, is Section 11 of the Act of February 13, 1925, which provides as follows:

> "Section 11. (a) That where, during the pendency of an action, suit, or other proceedings brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.

"(b) Similar proceedings may be had and taken where an action, suit, or proceedings brought by or against an officer of a State, or of a county, city or other governmental agency of a State, is pending in a court of the United States at the time of the officer's death or separation from the office.
* * * * * *"

Premises considered, the defendant in error, J. M. Haynie, as Sheriff and ex-Officio Collector of Taxes for Pulaski County, Arkansas, prays an order substituting as a party to this cause R. A. Cook, the successor in office of defendant in error.

HAL L. NORWOOD,
Attorney General of Arkansas;

SAM T. POE,
TOM POE,
For Defendant in Error.

STATE OF ARKANSAS,
COUNTY OF PULASKI.

We, Sam T. Poe and Tom Poe, counsel of record for defendant in error in the above entitled cause, do solemnly swear that the facts recited in the foregoing "Motion to Substitute as Party Successor in Office of Defendant in Error" are true.

SAM T. POE,
TOM POE.

Subscribed and sworn to before me this the 22nd day of April, 1929.

GRACE LASSITER,
Notary Public.

SUPREME COURT OF THE UNITED STATES.

No. 2.—October Term, 1929.

Surplus Trading Company, Plaintiff in Error, *vs.* R. A. Cook, as Sheriff and *Ex Officio* Collector of Taxes for Pulaski County, Arkansas.	In Error to the Supreme Court of the State of Arkansas.

[June 2, 1930.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This was a suit by the sheriff and collector of taxes of Pulaski County, Arkansas, to enforce payment by the Surplus Trading Company of taxes for the years 1922 and 1923, with penalties, upon certain personal property. The chancery court, in which the suit was brought, gave a decree for the defendant, and on appeal the Supreme Court of the State affirmed the decree as to the tax for 1923 and reversed it as to the tax for 1922 with a direction that a decree be entered for the plaintiff for the amount of that tax and the penalty, both of which were specified in the record, 174 Ark. 507.

The defendant resisted the collection of the tax for 1922 on the ground that the personal property on which it was laid was located within Camp Pike—an army mobilization, training and supply station of the United States lying within the exterior limits of Pulaski County—the lands in which had been purchased by the United States, with the consent of the legislature of the State, for the purpose of establishing, erecting and maintaining such an army station; and that the tax laws of the State could not be applied to property so located without bringing them, in that regard, into conflict with Article I, § 8, cl. 17 of the Constitution of the United States, which prescribes that the Congress shall have power—

"To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of

particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;".

The property attempted to be taxed consisted of a large quantity of woolen blankets which the defendant, a New York concern, purchased from the United States at an advertised sale a few days before the day fixed by the state law for listing personal property for taxation, and which in much the greater part was on that day in the army storehouses within Camp Pike awaiting shipment therefrom.

The Supreme Court of the State, although recognizing that the status of Camp Pike was as just stated and that the property on which the tax was laid was in much the greater part located therein, rejected the contention that the tax laws of the State could not be applied to property so located consistently with the consitutional provision cited.

It is not unusual for the United States to own within a State lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the State. On the contrary, the lands remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal.

A typical illustration is found in the usual Indian reservation set apart within a State as a place where the United States may care for its Indian wards and lead them into habits and ways of civilized life. Such reservations are part of the State within which they lie and her laws, civil and criminal, have the same force therein as elsewhere within her limits, save that they can have only restricted application to the Indian wards. Private property within such a reservation, if not belonging to such Indians, is subject to taxation under the laws of the State. Another illustration is found in two classes of military reservations within a State—one where the reservation, although established before the State is admitted into the Union, is not excepted from her jurisdiction at the time of her admission; and the other where the reservation, although established after the admission of the State, is established

either upon lands set apart by the United States from its public domain or upon lands purchased by it for the purpose without the consent of the legislature of the State. In either case, unless there be a later and affirmative cession of jurisdiction by the State, the reservation is a part of her territory and within the field of operation of her laws, save that they can have no operation which would impair the effective use of the reservation for the purposes for which it is maintained. If there be private property within such a reservation which is not held or used as an incident of military service it may be subjected to taxation like other private property within the State.

As respects such a military reservation—that is, one which is neither excepted from the jurisdiction of the State at the time of her admission nor established upon lands purchased therefor with the consent of her legislature—the State undobutedly may cede her jurisdiction to the United States and may make the cession either absolute or qualified as to her may appear desirable, provided the qualification is consistent with the purposes for which the reservation is maintained and is accepted by the United States. And where such a cession is made and accepted it will be determinative of the jurisdiction of both the United States and the State within the reservation.

But Camp Pike is not in the same class with any of the reservations of which we have spoken and should not be confused with any of them. Nor should it be confused with military or other reservations within a Territory of the United States. It is not questioned, nor could it well be, that Camp Pike comes within the words "forts, magazines, arsenals, dock-yards, and other needful buildings" in the constitutional provision. The land therefor was purchased by the United States with the consent of the legislature of the State in 1917. The constitutional provision says that Congress shall have power to exercise "exclusive legislation in all cases whatsoever" over a place so purchased for such a purpose. "Exclusive legislation" is consistent only with exclusive jurisdiction. It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dock-yards, etc. That no divided jurisdiction respecting the seat of government is intended is not only shown by the terms employed but is a matter of public history. Why as to forts, maga-

zines, arsenals, dock-yards, etc., is the power given made to depend on purchase with the consent of the legislature of the State if the jurisdiction of the United States is not to be exclusive and that of the State excluded?

The question is not an open one. It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.

The first reported decision on the question is *Commonwealth* v. *Clary*, 8 Mass. 72. The question there was whether the law of Massachusetts restricting the sale of intoxicating liquors to persons procuring and paying for licenses could be applied to an arsenal of the United States in Springfield, the land for which had been purchased with the consent of the Commonwealth. The court held that the license law could not be so applied and in that connection said, p. 77:

"An objection occurred to the minds of some members of the court, that if the laws of the commonwealth have no force within this territory, the inhabitants thereof cannot exercise any civil or political privileges, under the laws of Massachusetts, within the town of Springfield. We are agreed that such consequence necessarily follows; and we think that no hardship is thereby imposed on those inhabitants;—because they are not interested in any elections made within the state, not held to pay any taxes imposed by its authority, nor bound by any of its laws. And it might be very inconvenient to the United States, to have their labourers, artificers, officers and other persons employed in their service, subjected to the services required by the commonwealth of the inhabitants of the several towns."

In *Mitchell* v. *Tibbetts*, 17 Pick. 298, the question was whether a law of Massachusetts relating to vessels bringing stone within that Commonwealth could be applied to a vessel landing stone at the Charlestown Navy Yard, the land for which had been purchased by the United States with the consent of the Commonwealth. The court ruled that the law could not be so applied because the Commonwealth no longer had any jurisdiction over the navy yard.

In *United States* v. *Cornell*, Fed. Case No. 14,867, Mr. Justice Story, at circuit, held that a state consenting to the purchase by the United States of land for a fort was without jurisdiction of a

public offense subsequently committed therein, and he stated his reasons as follows:

"The constitution of the United States declares that congress shall have power to exercise 'exclusive legislation' in all 'cases whatsoever' over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings. When therefore a purchase of land for any of these purposes is made by the national government, and the state legislature has given its consent to the purchase, the land so purchased by the very terms of the constitution ipso facto falls within the exclusive legislation of congress, and the state jurisdiction is completely ousted. This is the necessary result, for exclusive jurisdiction is the attendant upon exclusive legislation; and the consent of the state legislature is by the very terms of the constitution, by which all the states are bound, and to which all are parties, a virtual surrender and cession of its sovereignty over the place. Nor is there anything novel in this construction. It is under the like terms in the same clause of the constitution that exclusive jurisdiction is now exercised by congress in the District of Columbia; for if exclusive jurisdiction and exclusive legislation do not import the same thing, the states could not cede or the United States accept for the purposes enumerated in this clause, any exclusive jurisdiction."

Of like import is the opinion of Mr. Justice Woodbury given at circuit in *United States* v. *Ames*, Fed. Cas. No. 14,441.

In *Sinks* v. *Reese*, 19 Ohio St. 306, which related to lands purchased with the consent of the legislature of Ohio for a national home for disabled volunteer soldiers, a question arose respecting the effect of a proviso in the act of consent declaring that nothing in the act should be construed to prevent residents of the home from exercising the right of suffrage within the township in which the home was located. The Supreme Court of the State held that through the purchase of the site for the home with the consent of the state legislature the United States acquired exclusive jurisdiction over the site and that the residents of the home, being within that exclusive jurisdicion, were not residents of the State and therefore not entitled to vote therein.

In *Foley* v. *Shriver*, 81 Va. 568, it was held of lands within the State of Virginia purchased with her consent for another national home for disabled volunteer soldiers, that in virtue of the constitutional provision the purchase invested the United States with complete jurisdiction of the lands to the exclusion of the State,

so that they were "no longer a part of the State of Virginia". And there was a like ruling in *Bank of Phoebus* v. *Byrum*, 110 Va. 708.

In *State* v. *Mack*, 23 Nev. 359, which related to a purchase by the United States with the state's consent of land for a post office and federal court building, it was held, notwithstanding a provision in the act of consent purporting to "except the administration of the criminal laws of the State", that the purchase operated under the constitutional provision to pass full jurisdiction over the land to the United States and to divest the State of all jurisdiction thereover, criminal as well as civil.

Like views of the operation of the constitutional provision are stated by Chancellor Kent in his Commentaries, Vol. 1, pp. *429-431; and by Judge Story in his work on the Constitution, 5th Ed., Vol. 2, §§ 1224-1227.

In *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525, this Court said, p. 532:

"When the title is acquired by purchase by consent of the Legislatures of the States, the federal jurisdiction is exclusive of all State authority. This follows from the declaration of the Constitution that Congress shall have 'like authority' over such places as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases whatsoever.' Broader or clearer language could not be used to exclude all other authority than that of Congress."

And after reviewing some of the earlier cases here cited the Court further said, p. 537:

"These authorities are sufficient to support the proposition which follows naturally from the language of the Constitution, that no other legislative power than that of Congress can be exercised over lands within a State purchased by the United States with her consent for one of the purposes designated; and that such consent under the Constitution operates to exclude all other legislative authority."

And the view thus expressed was given approving recognition in our recent decision in *United States* v. *Unzueta* (decided April 14, 1930) where it is said that, where the United States purchases lands by the consent of the legislature of the State within which they are situated for the purposes named in the constitutional provision, "the federal jurisdiction is exclusive of all state authority".

Apparently some of the cases to which we have referred were not brought to the attention of the Supreme Court of Arkansas. In its opinion it appears to have been guided largely by cases dealing with reservations in Territories and with reservations in States of lands which were not purchased by the United States with the consent of the States. Such cases are not in point, for they do not turn on the constitutional provision which is of controlling influence in cases like this. Another matter to which that court attached some importance is that the act by which the legislature consented to the purchase of the site for Camp Pike declares that the State "releases and relinquishes her right to tax" the lands and improvements during the ownership of the United States. Ark. Laws 1903, Act 180. These words of release it is argued disclose a purpose to reserve the power to tax, save as to the lands and improvements. But to this we do not assent. The words are ill-adapted to expressing such a purpose—so much so that, had it existed, there can be little doubt that it would have been stated differently. Not only so, but to construe the release as suggested would lead to a serious question respecting the validity of the release and would bring it into conflict with the preceding section, which directly states that the State "hereby consents to the purchase" of the site, and "the jurisdiction of this State within and over" the site "is hereby ceded" to the United States. The release is not in form or substance a proviso but is an affirmative provision inserted as an independent section and we think it means what it says and no more. That the legislature understood how to use a saving clause or proviso is evident from the following which appears at the end of the first section: "Provided, that this grant of jurisdiction shall not prevent execution of any process of this State, civil or criminal, upon any person who may be on said premises". Such a proviso is common to nearly all acts giving consent to purchase, and is regarded, says Chancellor Kent, as amounting, when accepted, to "an agreement of the new sovereign to permit the free exercise of such process, as being quoad hoc his own process". Kent's Commentaries, Vol. 1, p. *430.

For the reasons which have been stated we are of opinion that the Supreme Court of the State erred in holding that her tax laws could be applied to personal property within Camp Pike consistently with § 8, cl. 17, of Article I of the Constitution, and therefore that the judgment of that court must be reversed.

But to avoid any misapprehension it is well to state that our ruling is limited to the blankets which were within Camp Pike on May 1, 1922, the day fixed for listing personal property for assessment. We are led to make this statement because the record suggests, if it does not show, that on that day 21,235 of the blankets purchased by the plaintiff were held by it in a private warehouse in Little Rock, the county seat of Pulaski County, and 64,371 was the number remaining in the government storehouses at Camp Pike. Whether the assessment which was on the whole can be proportionally sustained as to the part in Little Rock so that the plaintiff will be charged with only such portion of the tax as pertains to that part of the blankets is a question of state law on which we intimate no opinion.

The judgment will be reversed and the case remanded for further proceedings not inconsistent with this opinion.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.